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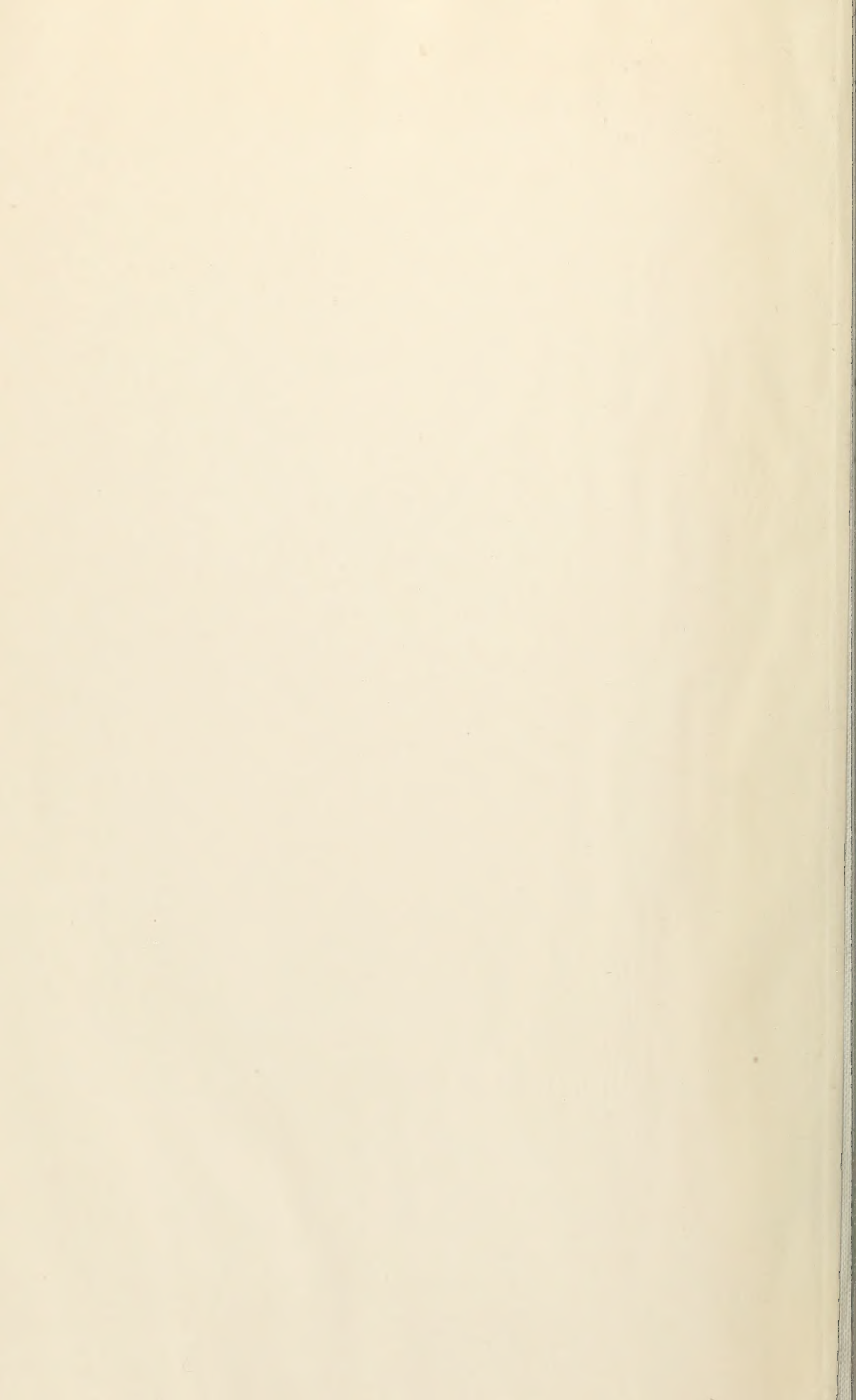
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United States
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of the OMAK WAREHOUSE AND
STORAGE COMPANY, a Corporation, Bankrupt.
OMAK WAREHOUSE AND STORAGE COMPANY,
a Corporation, and JOHN SCOTT and W. H.
DICKSON,

Appellants,

vs.

C. E. BLACKWELL & COMPANY, a Corporation,
OMAK TRADING COMPANY, a Corporation,
and VAL MIDDLETON,

Appellees.

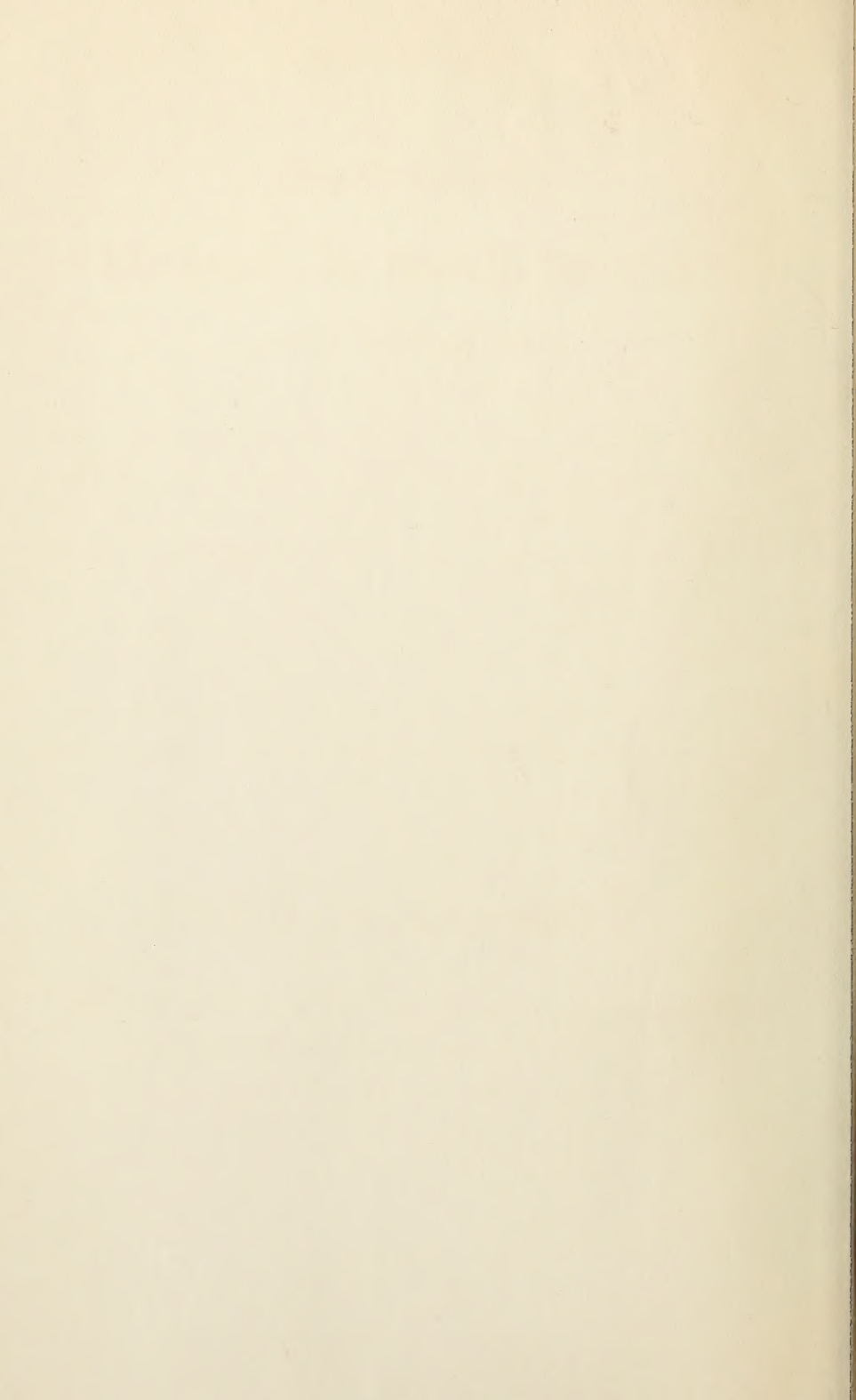
Transcript of Record.

Upon Appeal from the United States District Court
for the Eastern District of Washington,
Northern Division.

FILED

JUL 30 1921

F. D. MONCKTON,
CLERK.



United States
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of the OMAK WAREHOUSE AND
STORAGE COMPANY, a Corporation, Bankrupt.
OMAK WAREHOUSE AND STORAGE COMPANY,
a Corporation, and JOHN SCOTT and W. H.
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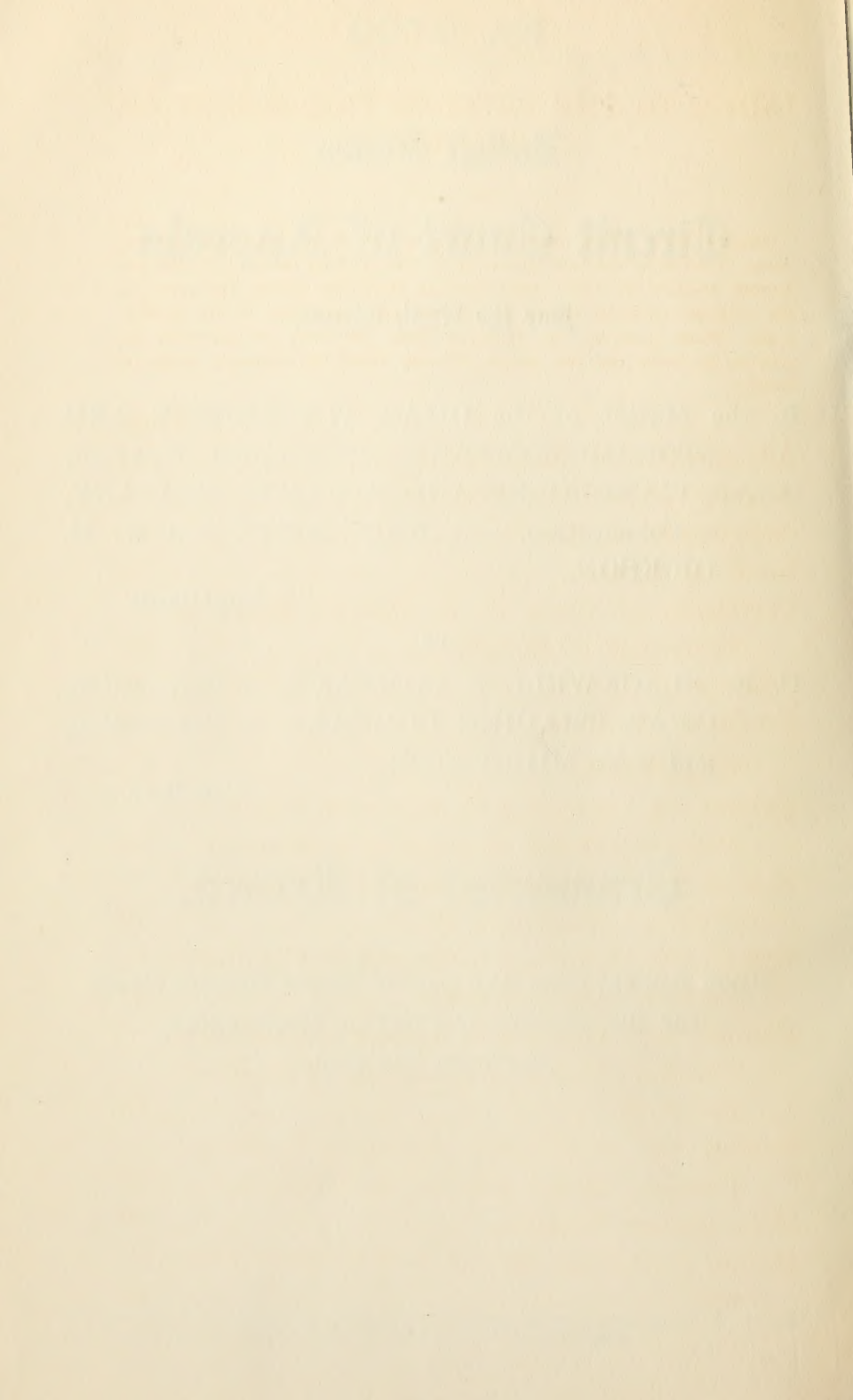
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Appellees.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Adjudication of Bankruptcy.....	34
Answer to Creditors' Petition.....	6
Assignment of Errors.....	40
Bond on Appeal.....	38
Certificate of Clerk U. S. District Court to Transcript of Record.....	45
Citation on Appeal.....	42
Creditors' Petition.....	1

EXHIBITS:

Exhibit "A" Attached to Answer to Creditors' Petition—Order Appointing a Receiver..	9
Exhibit "B" Attached to Answer to Creditors' Petition—Receiver's Bond.....	10
Exhibit "C" Attached to Answer to Creditors' Petition—Oath of Office.....	12
Exhibit "D" Attached to Answer to Creditors' Petition—Order Appointing Temporary Receivers.....	13
Exhibit "E" Attached to Answer to Creditors' Petition—Order Appointing Receivers....	15
Memorandum Opinion.....	19
Motion to Dismiss Answer to Creditors' Peti- tion	18

Index.	Page
Names and Addresses of Solicitors of Record...	1
Order Allowing Appeal.....	37
Order Allowing Intervention.....	33
Order Granting Motion to Dismiss Answer to Creditors' Petition.....	24
Petition for Appeal.....	36
Petition of Columbia Valley Lumber Co. to Intervene	29
Petition of Holter Hardware Company et al. to Intervene.....	25
Praecipe for Transcript of Record.....	44

Names and Addresses of Solicitors of Record.

P. D. SMITH, Okanogan City, Washington, Attorney for Appellant.

CHAS. H. LEAVY, Federal Building, Spokane, Washington, Attorney for Appellant.

FABIAN B. DODDS, Old National Bank Building, Spokane, Washington, Attorney for Petitioner.

EUGENE D. CLOUGH, Omak, Washington, Attorney for Petitioner. [2*]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Alleged Bankrupt.

Creditors' Petition.

To the Honorable Judge of the District Court of the United States for the Eastern District of Washington:

The petition of C. E. Blackwell & Co., a corporation organized and doing business under the laws of the State of Washington, having its principal business at Okanogan, Washington, and Omak Trading Company, a corporation, organized and doing business under the laws of the State of

*Page-number appearing at foot of page of original certified Transcript of Record.

Washington, having its principal place of business at Omak, Washington, and Val. Middleton of Omak, Washington, respectfully shows:

First: That said Omak Warehouse & Storage Company, a corporation, organized and existing under the laws of the State of Washington, for more than six months immediately preceding the filing of this petition, has been principally engaged in the business of warehousing and storage of fruit, and that its principal place of business is at Omak, Okanogan County, Washington; that the said Omak Warehouse & Storage Company, a corporation, is not a wage-earner or person engaged principally in farming or tilling the soil, and is not a municipal railroad, insurance or banking corporation and owes debts to the amount of \$1,000.00 or over.

Second: That your petitioners are creditors of said alleged bankrupt, having provable claims amounting in the aggregate in excess of securities held by them to the sum of \$500.00.

Third: That the nature and amount of your petitioners' claims are as follows:

(2) The claim of your petitioner, C. E. Blackwell & Co., a [3] corporation, is as follows: Goods, wares and merchandise sold and delivered to the alleged bankrupt above named, evidenced by a certain promissory note amounting to the sum of \$775.97, dated August 9th, 1921, due thirty days after said date, bearing interest at the rate of ten per cent per annum.

(b) The claim of your petitioner, Omak Trad-

ing Company, a corporation, is as follows: Goods, wares and merchandise sold and delivered to the alleged bankrupt above named, evidenced by a certain promissory note amounting to the sum of \$192.00, dated November 1st, 1920, payable on demand and bearing interest at the rate of ten per cent per annum.

(c) The claim of your petitioner, Val Middleton, is as follows: Goods, wares and merchandise and labor furnished to the said alleged bankrupt by your said petitioner at the special instance and request of said alleged bankrupt during the year 1920.

Fourth: Your petitioners further show that the said alleged bankrupt is insolvent and within four months next preceding the date of the filing of this petition, and while insolvent, committed an act of bankruptcy as follows: In the Superior Court of the State of Washington in and for the County of Okanogan, on the 12th day of January, A. D. 1921, in an action entitled "F. B. Dallam, Plaintiff, vs. Omak Warehouse & Storage Company, a corporation, Defendant," receivers were appointed by order of said Court on the grounds of the insolvency of said corporation, and thereupon all of the assets and properties of said corporation were put in charge of said receivers. That the fact of said insolvency was not denied but was admitted by said corporation in said proceeding.

WHEREFORE your petitioners pray that service of this petition with a subpoena may be made the Omak Warehouse & Storage Company, a corpora-

tion, as provided in the acts of Congress relating to bankruptcy, and that it may be adjudged by this Court to be a bankrupt within the purview of said acts. [4]

C. E. BLACKWELL & CO., INC.

By L. R. MULLEN,

Act. Treas.

OMAK TRADING CO.

By R. E. ELLINGSWORTH,

Treas.

VAL MIDDLETON,

Petitioners.

EUGENE D. CLOUGH,

WM. O'CONNOR,

Attorneys for Petitioners.

State of Washington,
County of Okanogan,—ss.

L. R. Mullen, being first duly sworn, deposes and says that he is the treasurer of C. E. Blackwell & Co., a corporation, one of the petitioning creditors mentioned and described in the foregoing petition, and makes solemn oath that the statements of fact contained in the foregoing petition are true, according to the best of his knowledge, information and belief.

L. R. MULLEN.

Subscribed and sworn to before me this 20 day of April, 1921.

GEORGE W. LEE,

Notary Public in and for the State of Washington,
Residing at Omak, Wash.

State of Washington,
County of Okanogan,—ss.

R. E. Ellingsworth, being first duly sworn, deposes and says that he is the treasurer of Omak Trading Company, a corporation, one of the petitioning creditors mentioned and described in the foregoing petition, and makes solemn oath that the statements of fact contained in the foregoing petition are true, according to the best of his knowledge, information and belief.

R. E. ELLINGSWORTH.

Subscribed and sworn to before me this 20th day of April, 1921.

E. D. CLOUGH,
Notary Public in and for the State of Washington,
Residing at Omak, Wash. [5]

State of Washington,
County of Okanogan,—ss.

Val Middleton, one of the petitioning creditors mentioned and described in the foregoing petition, does hereby make solemn oath that the statements of fact contained in the foregoing petition are true, according to the best of his knowledge, information, and belief.

VAL MIDDLETON.

Subscribed and sworn to before me this 20th day of April, 1921.

E. D. CLOUGH,
Notary Public in and for the State of Washington,
Residing at Omak, Washington.

Filed in the U. S. District Court, Eastern District of Washington. April 22, 1921. Wm. H. Hare, Clerk. By H. J. Dunham, Deputy. [6]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation,
Alleged Bankrupt.

Answer to Creditors' Petition.

Comes now the Omak Warehouse & Storage Company and John Scott and W. H. Dickson, receivers thereof, and for answer to the petition herein say:

I.

That they deny each and every allegation, matter and thing as a whole thereof therein contained except as is herein specifically admitted.

II.

Admit paragraphs I, II and III of said petition.

III.

Further answering paragraph IV of said petition, said Omak Warehouse & Storage Company and John Scott and W. H. Dickson, receivers thereof, say that in the Superior Court of Okanogan County, Washington, in the case of F. B. Dallam, Plaintiff, vs. Omak Warehouse & Storage Company, a Corporation, Defendant, and on the 2d day of December, 1920, said Court in said cause duly appointed N. E.

Whitworth and John Scott as receivers of said company, and pursuant to said order of appointment, did on the 2d day of December, 1920, take the oath of office required by law, and on the 3d day of December, 1920, filed in said court and cause the bond required by law and the order of said Court, and took possession of the property and assets of said company, a copy of which order, oath and bond is attached hereto marked, [7] respectively, Exhibits "A," "B" and "C" and made a part hereof; that on December 7, 1920, said Court in said cause made a further order continuing the said order of December 2d, 1920, in force and fixing another day of hearing, a copy of which order is attached hereto marked Exhibit "D" and made a part hereof; that on December 10, 1920, the attorneys for the plaintiff and defendant in said cause of F. B. Dallam, Plaintiff, vs. Omak Warehouse & Storage Company, a Corporation, Defendant, signed and filed in said cause a stipulation which omitting the caption was and is in words and figures following, to wit:

"It is hereby stipulated by and between the plaintiff and defendant in the above-entitled action that the hearing on the show cause order heretofore issued and served in this cause be continued to Friday, December 17, 1920, at 10:00 o'clock A. M. and the said order appointing temporary receivers be continued in force until the further order of the court.

Dated this 10th day of December, 1920.

SMITH & BROWN,

Attorneys for Plaintiff.

EUGENE D. CLOUGH,

Attorney for Defendant."

That said cause was further continued by oral stipulation of the parties until January 12th, 1921, when said Court in said cause appointed permanent receivers for said defendant company, which said order of appointment is attached hereto marked Exhibit "E" and made a part of this answer, and said receivers qualified and have ever since continued to act; that more than four months expired between the date of appointing temporary receivers for said Omak Warehouse & Storage Company, and the date of filing the involuntary petition herein.

WHEREFORE, said Omak Warehouse & Storage Company and John Scott and W. H. Dickson, Receivers thereof, pray that the involuntary petition be dismissed and the prayer thereof denied.

P. D. SMITH,

Attorney for Omak Warehouse & Storage Company, and John Scott and W. H. Dickson, Receivers. [8]

Exhibit "A."

In the Superior Court of Okanogan County, State
of Washington.

F. B. DALLAM,

Plaintiff,

vs.

OMAK WAREHOUSE & STORAGE COMPANY,
a Corporation,

Defendant.

ORDER APPOINTING A RECEIVER.

It fully appearing to the Court from the complaint of the plaintiff duly verified that the defendant is indebted to plaintiff and that the defendant is unable to pay its just debts in due course as they may become due and is therefore insolvent, and it further appearing to the Court that an emergency exists for the appointment of a temporary receiver without notice,

NOW, THEREFORE, it is hereby ordered that John Scott and N. E. Whitworth be and are hereby appointed temporary receivers and is hereby authorized and empowered to take charge of the property and assets of the defendant, Omak Warehouse & Storage Company, upon his taking the oath and getting a bond conditioned according to law in the sum of \$1,000.00.

And it is further ordered that the defendant be and appear before this court at the courtroom thereof in the town of Okanogan, on Tuesday, the

7th day of December, 1920, at 10:00 o'clock A. M. of said day, then and there to show cause, if any there be, why the appointment of said receiver should not be made permanent during the pendency of this action and until the further order of this court.

Done in open court this 2d day of December, 1920.

C. H. NEAL,
Judge.

Filed Dec. 2d, 1920. Margaret E. Ward,
Clerk. [9]

Exhibit "B."

In the Superior Court of the State of Washington
in and for Okanogan County.

No. —.

F. B. DALLAM,

Plaintiff,

vs.

OMAK WAREHOUSE & STORAGE COMPANY,
Defendant.

RECEIVER'S BOND.

KNOW ALL MEN BY THESE PRESENTS:
That we, N. E. Whitworth and John Scott, as principal, and the National Surety Company, a corporation organized under the laws of the State of New York, and authorized to transact business of surety in the State of Washington, as surety, are held and firmly bound unto the State of Washing-

ton in the just and full sum of One Thousand Dollars, for the payment of which, truly to be made, we hereby bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed and dated this 3d day of December, 1920.

THE CONDITION of the foregoing bond is such that, whereas, in the above-entitled action and by the above-entitled court, on the 2d day of December, 1920, the above-named principal was appointed receiver of the Omak Warehouse & Storage Company, a corporation, with authority and instruction to take charge of the property and assets of the Omak Warehouse & Storage Company, and hold and dispose of the same, under the order of the Court, and has been directed to give a bond to said State of Washington in the sum of One Thousand Dollars, according to law.

NOW, THEREFORE, if the above-bounden principals shall and will faithfully discharge the duties of receiver in said action and shall and will obey the orders of the Court therein, then this obligation shall be void, otherwise be and remain in full force and effect.

N. E. WHITWORTH.

JOHN SCOTT.

NATIONAL SURETY COMPANY OF
NEW YORK.

By P. D. SMITH,

Attorney in Fact.

Attest: W. C. GRESHAM,

Attorney in Fact.

Filed Dec. 3, 1920. Margaret E. Ward, Clerk.
[10]

Exhibit "C."

In the Superior Court of Okanogan County, State
of Washington.

F. B. DALLAM,

Plaintiff,

vs.

OMAK WAREHOUSE & STORAGE COMPANY,
a Corporation,

Defendant.

OATH OF OFFICE.

State of Washington,
County of Okanogan,—ss.

N. E. Whitworth and John Scott, being first duly sworn, each for himself and not one for the other, deposes and says that he will support the constitution and the laws of the United States and of the State of Washington, and will perform the duties of receiver of the Omak Warehouse & Storage Company to the best of his ability.

H. E. WHITWORTH.

JOHN SCOTT.

Subscribed and sworn to before me this 2d day
of December, 1920.

[Seal]

P. D. SMITH,

Notary Public Residing at Okanogan, Wash.

Filed Dec. 3, 1920. Margaret E. Ward, Clerk.
[11]

Exhibit "D."

In the Superior Court of Okanogan County, State
of Washington.

No. 4570.

F. B. DALLAM,

Plaintiff,

vs.

OMAK WAREHOUSE & STORAGE COMPANY,
a Corporation,

Defendant.

ORDER.

Now, on this day, it appearing to the Court that heretofore under date of December 2d, 1920, in the above-entitled cause, by order of the Court, John Scott and N. E. Whitworth were duly appointed temporary receivers of the above-named defendant corporation, authorized and empowered to take charge of the property and assets of the defendant upon their taking the oath and furnishing a bond in the sum of \$1000.00, and it appearing that the said named persons have duly qualified as such temporary receivers, and the said order dated December 2, 1920, having fixed this date, to wit, December 7th, 1920, at 10:00 o'clock A. M. as the time and place when the said defendant should appear and show cause, if any there be, why the appointment of the said receivers should not be made permanent during the pendency of this action and it appearing at this time that no proper service of the said order

and notice of such appointment of temporary receivers has been made upon the said defendants,

NOW, THEREFORE, upon oral application of the plaintiff, appearing by his attorneys, Messrs. Smith & Brown and Mr. Fred Kemp, and the Court being fully advised,

It is hereby ordered that the appointment of the said John Scott and N. E. Whitworth as temporary receivers of said defendant corporation be and the same is hereby continued in force and the said order heretofore made on December 2d, 1920, in this cause is continued in force and effect until the hearing of the same shall be had as herein further specified. [12]

And it is therefore hereby ordered that the defendant, the Omak Warehouse & Storage Company, a corporation, be and it is hereby required to appear at this court at the courtroom thereof in the town of Okanogan, on Saturday, the 11th day of December, 1920, at the hour of 9:30 A. M. of said day then and there to show cause, if any there be, why the appointment of the said receivers should not be made permanent during the pendency of this action and until further order of this court.

And it is ordered that the said hearing may be upon oral documentary and written proof.

Done in open court this 7th day of December, 1920.

C. H. NEAL,
Judge.

Filed Dec. 7, 1920. Margaret E. Ward, Clerk.
By Will L. Wright, Deputy. [13]

Exhibit "E."

In the Superior Court of Okanogan County, State
of Washington.

F. B. DALLAM,

Plaintiff,

vs.

OMAK WAREHOUSE & STORAGE COMPANY,
a Corporation,

Defendant.

ORDER APPOINTING RECEIVERS.

This cause is regularly before the Court on the application of the plaintiff for the appointment of a receiver or receivers of the property and assets of the above-named defendant company, due notice of said application having heretofore been given and it fully appearing to the Court that the defendant is indebted to the plaintiff and other persons and corporations in large amounts which is due and which the defendant is unable to pay in due course; and it further appearing to the Court that the defendant is the owner of a large amount of property and assets, and that a receiver or receivers should be appointed by this Court to take charge of the property and assets of said defendant company and hold and dispose of the same under the orders and directions of this Court and to pay the debts of said defendant company allowed by the Court as rapidly as possible, and it further appearing to the Court that John Scott and W. H. Dixon, both of Omak.

Washington, are qualified and suitable and proper persons to be appointed by the Court as such receivers,—

NOW, THEREFORE, by reason of the law and premises, it is hereby ordered and adjudged that said John Scott and W. H. Dixon be and are hereby appointed permanent receivers of the property and assets of said defendant company to serve during the pendency of this action and until the further order of the Court. And it is further ordered that said receivers take the oath required by [14] law and enter into bond payable to the State of Washington, conditioned according to law in the penal sum of \$10,000.00.

And *it further* ordered that said receivers give notice of their appointment as such by publication for two consecutive weeks in the “Omak Chronicle,” a weekly newspaper of general circulation printed and published at Omak, Washington.

And it is further ordered that said John Scott and W. H. Dickson, as such receivers, forthwith take charge of all the property and assets of said defendant company, and as speedily as possible collect all accounts, demands and bills receivable of every name and nature, due or owing to said defendant company or in which it has any interest by contract or otherwise, and to that end said receivers are hereby authorized to bring and prosecute and all actions or proceedings, without further application to this court.

Done in open court this 12th day of January, 1921.

C. H. NEAL,
Judge.

Filed Jan. 12, 1921. Margaret E. Ward, Clerk.
[15]

United States of America,
Eastern District of Washington,—ss.

O. M. Forkel, being first duly sworn, on his oath deposes and says that he is secretary-treasurer of the Omak Warehouse & Storage Company and makes this verification on its behalf; that he has read the foregoing answer, knows the contents thereof and the allegations therein contained are true as he verily believes.

O. M. FORKEL.

Subscribed and sworn to before me this 3d day of May, 1921.

P. D. SMITH,
Notary Public, Residing at Okanogan, Wn.

United States of America,
Eastern District of Washington,—ss.

John Scott and W. H. Dickson, being first duly sworn, each for himself and not one for the other, deposes and says he is one of the receivers of the Omak Warehouse & Storage Company; that he has read the above and foregoing answer, knows the contents thereof and the allegations therein contained are true as he verily believes.

JOHN SCOTT.
W. H. DICKSON.

Subscribed and sworn to before me this 3d day of May, 1921.

P. D. SMITH,

Notary Public, Residing at Okanogan, Wn.

Filed in the U. S. District Court, Eastern District of Washington. May 5, 1921. Wm. H. Hare, Clerk. By H. J. Dunham, [16]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

IN BANKRUPTCY—No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE CO, a Corporation, Alleged Bankrupt.

Motion to Dismiss Answer to Creditors' Petition.

Come now the petitioning and intervening creditors herein and move the Court for dismissal of the answer to creditors' petition filed by the Omak Warehouse & Storage Company and John Scott and W. H. Dickson, Receivers thereof, on the ground and for the reason that the said answer does not state facts sufficient to constitute a defense.

If the foregoing motion should be denied, the said petitioning creditors and intervening creditors move to strike the affirmative matters set forth in said answer on the ground and for the reason that

the same does not constitute a defense.

E. D. CLOUGH,

FABIAN B. DODDS,

Attorneys for Petitioning and Intervening Creditors.

Filed in the U. S. District Court, Eastern District of Washington. May 18, 1921. Wm. H. Hare, Clerk. H. J. Dunham, Deputy. [17]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Bankrupt.

Memorandum Opinion.

P. D. SMITH, Attorney for Bankrupt and Receivers.

DODDS & DODDS, Attorneys for Petitioners.

RUDKIN, District Judge.—The involuntary petition in this case charges the commission of an act of bankruptcy in that receivers were appointed by order of one of the state courts on the ground of the insolvency of the bankrupt, whereupon all of the assets and property of the bankrupt were put in charge of such receivers. The petition was filed on April 22, 1921, and the act of bankruptcy was committed on the 12th day of January, 1921, or

within the preceding four months. The answer of the bankrupt alleges in substance that temporary receivers were appointed for the bankrupt on the 2d day of December, 1920, without notice, accompanied by an order requiring the bankrupt to show cause on the 7th day of December, 1920, why the appointment of such receivers should not be made permanent. On the 7th day of December, 1920, a further order was entered reciting that no proper service of the previous order had been made, and continuing the temporary receivership until the 11th day of December, 1920, on which last mentioned date the bankrupt was required to appear and show cause why the receivers should not be made permanent. By stipulation of counsel the hearing was continued from December 11th, until December 17th, and again until January 12, 1921, on which date permanent receivers were appointed upon the ground of insolvency.

The question arises when were receivers put in charge of the property of the bankrupt under the laws of the state [18] because of insolvency. Section 3a of the Bankruptcy Act provides:

“Acts of bankruptcy by a person shall consist of his having * * * (4) made a general assignment for the benefit of his creditors, or, being insolvent, applied for a receiver or trustee for his property or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a state, of a territory, or of the United States.”

Subdivision b of the same section provides that a petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act.

Section 741, Rem. & Bal. Codes and Statutes of Washington, provides that a receiver may be appointed by the Court. "5. When a corporation has been dissolved or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights."

In 1 Loveland on Bankruptcy, page 335, it is said:

"It is immaterial whether the receiver is a temporary or a permanent receiver."

There is at least apparent conflict of authority on this question, but it seems to me the better rule is that there is no appointment of a receiver on the ground of insolvency until there is either an admission of insolvency by the bankrupt or a formal adjudication of insolvency after notice. Under the laws of this state the power of a Court to appoint a receiver without notice is very limited.

Cole vs. Price, 22 Wash. 18.

Haggard vs. Sanglin, 31 Wash. 165.

State ex rel. Washington Match Co. vs. Superior Court, 34 Wash. 123.

In discussing the meaning of this provision of the Bankruptcy Act, in Zugalla vs. International Mercantile Agency, 142 Fed. 928, Judge Gray, one of the ablest of the Circuit Judges, speaking of a temporary receivership such as this, said:

“It is manifest that the restraining order and the appointment of a receiver, covered by this order, are not the injunction and appointment of a receiver contemplated by the [19] statute, after a judicial inquiry as to the alleged statutory insolvency of the corporation. The order was evidently made under the general equity powers of the Court of Chancery, and not under statutory authority. It was made, both as a restraining order and as an appointment of a receiver, to preserve in *statu quo* the property and assets of the corporation, in the custody of an officer of this court, until action could be taken under the statute, and the judicial inquiry contemplated by the statute and provided for in the preliminary order itself, with due notice to all parties in interest. Again, the Court said in speaking of the final order:

“The appointment of a receiver thus made was, in the words of the section of the bankrupt act under consideration, a receiver who had been put in charge of the property of the corporation because of its insolvency, under the laws of a state. To be put in charge, ‘because of the insolvency’ of a corporation, must mean because of judicially determined insolvency. To hold otherwise, would do violence to the settled and orderly procedure of judicial tribunals, and would also lead to absurd consequences not to be unnecessarily involved. The law requires that the appointment of a receiver, in

order to constitute an act of bankruptcy, must be made by reason of the existence of a certain fact, to wit, the insolvency of a corporation. The existence of such a fact must necessarily be determined, either by the admission of the party or by evidence adduced in a judicial inquiry duly had. In the *ex parte* order made for a temporary receiver, or custodian, on the 25th of August, it is distinctly stated that the same was made because insolvency was charged, not because insolvency existed. The appointment of a receiver, because of insolvency, without which no act of bankruptcy has been committed, has not occurred, and that this is so appears plainly, palpably and unequivocally from the record of the case, in which the order was made. If this were otherwise, the absurd result might well have happened, that after the adjudication of bankruptcy, because of the temporary appointment of a receiver, on August 25th, on the hearing of the rule to show cause on September 6th, the requisite jurisdictional insolvency might not have been shown to the New Jersey chancellor, in consequence of which no receiver could have been appointed under the New Jersey statute."

True, the *ex parte* order made in this case on the 2d day of December recites that it appears from the verified complaint that the defendant is insolvent, but such a recital without hearing or opportunity to be heard is of no avail.

I am therefore of opinion that the act of bankruptcy was committed within the four month period, and the motion to strike the answer must be sustained.

Filed in the U. S. District Court, Eastern District of Washington. May 26, 1921. W. H. Hare, Clerk. [20]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

IN BANKRUPTCY—No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Alleged Bankrupt.

Order Granting Motion to Dismiss Answer to Creditors' Petition.

This cause coming on regularly to be heard this day, on the petitioning creditors' motion to strike the answer filed by the bankrupt and receivers, and the Court having heard the argument of counsel,

IT IS ORDERED: That said motion be and the same is hereby granted and the answer is hereby stricken.

Done in open court this 31st day of May, 1921.

FRANK H. RUDKIN,
District Judge.

Filed in the U. S. District Court, Eastern District of Washington. May 21, 1921. W. H. Hare, Clerk. [21]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

IN BANKRUPTCY—No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE CO, a Corporation, Alleged Bankrupt.

Petition of Holter Hardware Company et al. to Intervene.

To the Hon. FRANK H. RUDKIN, Judge of the District Court of the United States, for the Eastern District of Washington.

The petition of Holter Hardware Company, a corporation, the Standard Oil Company, a corporation, and John W. Graham & Company, a corporation, respectfully alleges and shows on information and belief:

I.

That your petitioner, Holter Hardware Company, is a corporation organized under the laws of the State of Washington, with its principal place of business at Spokane, and is a creditor of the above-named Omak Warehouse & Storage Company, having a provable claim against same, amounting to \$234.60, in excess of securities held by it. The nature and amount of your petitioner's claim is for goods, wares and merchandise sold and delivered.

That your petitioner, Standard Oil Company, is a corporation organized under the laws of the State of California, doing business in the city of Spokane, and is a creditor of the above-named Omak

Warehouse & Storage Company, having a provable claim against same, amounting to \$427.79, in excess of securities held by it. The nature and amount of your petitioner's claim is for goods, wares, and merchandise sold and delivered.

That your petitioner, John W. Graham & Company, is a corporation organized under the laws of the State of Washington, with its principal place of business at Spokane, and is a creditor of the above-named Omak Warehouse & Storage Company, having a [22] provable claim against, same, amounting to \$11.34, in excess of securities held by it. The nature and amount of your petitioner's claim is for goods, wares and merchandise sold and delivered.

II.

That on or about the — day of April, 1921, an involuntary petition in bankruptcy was filed in the office of the clerk of this court, praying that the Omak Warehouse & Storage Company be adjudged an involuntary bankrupt. That said petition is still pending and your petitioners desire to join in said petition that the said Omak Warehouse & Storage Company be adjudged an involuntary bankrupt.

WHEREFORE, your petitioners respectfully prays that he be allowed to join in the said petition that the Omak Warehouse & Storage Company be adjudged a bankrupt, within the purview of the

Bankruptcy Act of 1898, and the amendments thereof.

HOLTER HARDWARE COMPANY.

By W. H. DEAN,

Its Mgr. & V. P.

STANDARD OIL COMPANY.

By H. A. LEHNHARDT,

Its Dist. Sales Mgr.

JOHN W. GRAHAM & COMPANY.

By J. W. GRAHAM,

Its President.

DODDS & DODDS,

E. D. CLOUGH,

Attorneys for Petitioners. [23]

State of Washington,
County of Spokane,—ss.

W. H. Dean, being first duly sworn, deposes and upon his oath says: That he is the Mgr. and Vice-president of the Holter Hardware Company, petitioner above named; that the statement of facts contained in the foregoing petition is true according to his best knowledge, information and belief.

W. H. DEAN.

Subscribed and sworn to before me this 14th day of May, 1921.

BENJAMIN HAMMOND,

Notary Public, Residing at Spokane.

State of Washington,
County of Spokane,—ss.

H. A. Lehnhardt, being first duly sworn, deposes and upon his oath says: That he is the Dist. Sales

Mgr. of the Standard Oil Company, petitioner above named; that the statement of facts contained in the foregoing petition is true according to his best knowledge, information and belief.

H. A. LEHNHARDT.

Subscribed and sworn to before me this 14th day of May, 1921.

BENJAMIN HAMMOND,
Notary Public, Residing at Spokane.

State of Washington,
County of Spokane,—ss.

John W. Graham, being first duly sworn, deposes and upon his oath says: That he is the president of the John W. Graham & Company, petitioner above named; that the statement of facts contained in the foregoing petition is true according to his best knowledge, information and belief.

JOHN W. GRAHAM.

Subscribed and sworn to before me this 14th day of May, 1921.

BENJAMIN HAMMOND,
Notary Public, Residing at Spokane.

Filed in the U. S. District Court, Eastern District of Washington. May 16, 1921. W. H. Hare, Clerk. [24]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

IN BANKRUPTCY—No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Bankrupt.

Petition of Columbia Valley Lumber Co. to Intervene.

To the Honorable FRANK H. RUDKIN, Judge of the District Court of the United States for the Eastern District of Washington:

The petition of the Columbia Valley Lumber Co., a corporation, organized and doing business under the laws of the State of Washington, having its principal office at Seattle, Wash., and Citizens State Bank, a banking corporation, organized and doing business under the laws of the State of Washington, having its principal place of business at Omak, Wash., and F. A. De Voss, of Omak, Wash., respectfully shows:

FIRST. That your petitioners are creditors of the above-named Omak Warehouse and Storage Co., a corporation having provable claims against said Omak Warehouse & Storage Co. in the aggregate in excess of securities held by them \$24,920.05, besides interest.

That the nature of your petitioners' claims is as follows:

(a) The claim of your petitioner, Columbia Valley Lumber Co., a corporation, is as follows:

For merchandise consisting principally of lumber and building material, sold and delivered to the alleged bankrupt above named at its special instance and request during the year 1920, amounting in all to the sum of \$1,035.80, no part of which has been paid, except the sum of \$211.75, leaving due and unpaid the sum of \$824.05, together with interest thereon from Jan. 1, 1921, at the rate of 6 per cent per annum.

(b) The claim of your petitioner, Citizens' State Bank, Omak, Wash., a corporation, is for money loaned to said Omak Warehouse & Storage Co., as evidenced by six certain promissory notes bearing interest at the rate of 10 per cent per annum upon \$10,000 of said amount from Sept. 17th, 1920, and interest upon \$5,000 at the same rate from Sept. 8th, 1920; upon the sum of \$5,000 from [25] Sept. 10, 1920, and upon the sum of \$450 from Nov. 16th, 1920, all of which sums are wholly due and unpaid though due demand has been made.

(c) The claim of your petitioner, F. A. De Voss, is for goods, wares and merchandise sold and delivered to the said Omak Warehouse & Storage Co. between April 7th, 1920, and March 10th, 1921, at its special instance and request, amounting in all to the sum of \$206.60, no part of which has been paid except the sum of \$50.00, leaving a balance of \$156.60.

SECOND. That on or about the 22d day of April, 1921, C. E. Blackwell & Co., a Corporation, Omak Trading Co., a corporation, and Val Middleton filed in the office of the clerk of this court a petition that the Omak Warehouse & Storage Co., a corporation,

be adjudged an involuntary bankrupt. That said petition is still pending and that your petitioners desire to join in the petition of the said C. E. Blackwell & Co., a corporation, Omak Trading Co., and Val Middleton, that the said Omak Warehouse & Storage Co. be adjudged a bankrupt within the purview of the bankruptcy act of 1898 and the amendments thereof.

And the petitioners further respectfully pray that in case of reference of this matter, that it be referred to the Referee in Bankruptcy at Spokane, Wash.

COLUMBIA VALLEY LUMBER COMPANY.

By R. L. WRIGHT,
Mgr. Omak Yard.
CITIZENS' STATE BANK,
Omak, Wash.

By W. E. WEEKS,
Cashier.
F. A. DE VOS,
Petitioners.

EUGENE D. CLOUGH,
DODDS & DODDS,

Attorneys for Petitioners. [26]

State of Washington,
County of Okanogan,—ss.

R. L. Wright, being first duly sworn, deposes and says that he is the manager of the Columbia Valley Lumber Co., a corporation, one of the petitioning creditors mentioned and described in the foregoing petition and as such, has charge of the hand-

ling and collection of accounts for said corporation at Omak, Wash., and is the person best able to verify the facts in regard to the foregoing claim, and makes the oath that the statements of fact contained in the foregoing petition are true according to the best of his knowledge, information and belief.

R. L. WRIGHT.

Subscribed and sworn to before me this 12th day of May, 1921.

E. D. CLOUGH,

Notary Public in and for the State of Washington,
Residing at Omak, Wash.

State of Washington,
County of Okanogan,—ss.

W. E. Weeks, being first duly sworn, deposes and says that he is the cashier of the Citizens' State Bank, Omak, Wash., a corporation, one of the petitioning creditors mentioned and described in the foregoing petition, that said corporation has no treasurer, but that his duties most nearly correspond to those of such officer, and makes solemn oath that the statements of fact contained in the foregoing petition are true according to the best of his knowledge, information and belief.

W. E. WEEKS.

Subscribed and sworn to before me this 12th day of May, 1921.

E. D. CLOUGH,

Notary Public in and for the State of Washington,
Residing at Omak, Wash. [27]

State of Washington,
County of Okanogan,—ss.

F. A. De Voss, one of the petitioning creditors mentioned and described in the foregoing petition, does hereby make solemn oath that the statements of fact contained in the foregoing petition are true, according to the best of his knowledge, information, and belief.

F. A. DE VOS.

Subscribed and sworn to before me this 12th day of May, 1921.

Notary Public in and for the State of Washington,
Residing at Omak, Wash.

Filed in the U. S. District Court, Eastern District of Washington. May 16, 1921. W. H. Hare, Clerk. [28]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

IN BANKRUPTCY.—No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Alleged Bankrupt.

Order Allowing Intervention.

The Columbia Valley Lumber Company, a Corporation, the Citizens State Bank, a banking corporation, F. A. De Voss, the Holter Hardware

Company, a corporation, the Standard Oil Company, a corporation, and John W. Graham & Company, a corporation, having filed their verified petitions praying that they be joined as petitioning creditors in the above-entitled proceeding, and upon the petition in bankruptcy and all proceedings heretofore had herein, and upon motion of E. B. Clough and Dodds & Dodds, attorneys for said petitioners,—

IT IS ORDERED: That said petitioners be and they hereby are allowed to intervene herein and are hereby joined and made petitioning creditors in the petition praying for the involuntary adjudication of the Omak Warehouse & Storage Company, a corporation, filed in the office of the clerk of the above-entitled court, on the 16th day of April, 1921.

FRANK H. RUDKIN,

District Judge.

Filed in the U. S. District Court, Eastern District of Washington. May 16, 1921. W. H. Hare, Clerk. [29]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

IN BANKRUPTCY.—No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Bankrupt.

Adjudication of Bankruptcy.

At Spokane, in said District, on the 8th day of June, 1921, before the Hon. FRANK H. RUDKIN, Judge of said Court in Bankruptcy.

The petition of C. E. Blackwell & Co., a corporation, Omak Trading Company, a corporation, and Val Middleton, that the Omak Warehouse & Storage Company, a corporation, be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered and the said Omak Warehouse & Storage Company and John Scott and W. H. Dickson, Receivers thereof, having filed an answer to said petition and the Court having heretofore granted petitioners' motion to strike said answer from the files, and the said alleged bankrupt and the Receivers thereof having refused and failed to plead further the said Omak Warehouse & Storage Company, a corporation, is hereby declared and adjudged bankrupt accordingly.

WITNESS the Hon. FRANK H. RUDKIN, Judge of said Court, and the seal thereof at Spokane, in said District, on the 8th day of June, 1921.

W. H. HARE,
Clerk.

Enter: FRANK H. RUDKIN,
Judge.

Filed in the U. S. District Court, Eastern District of Washington. June 8, 1921. W. H. Hare, Clerk. [30]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Bankrupt.

Petition for Appeal.

The above-named bankrupt, Omak Warehouse and Storage Company, a corporation, and John Scott and W. H. Dickson, Receivers thereof, feeling themselves aggrieved by the order of Court made and entered herein on the 8th day of June, 1921, in the above-entitled proceeding in bankruptcy, do hereby appeal from the said order declaring and adjudging the said Omak Warehouse and Storage Company, a corporation, a bankrupt, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors filed herein, and pray that this appeal be allowed, and that Citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said order was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, in the State of California.

Dated this 11th day of June, A. D. 1921.

P. D. SMITH,

CHAS. H. LEAVY,

Attorneys for Omak Warehouse & Storage Co., and
John Scott and W. H. Dickson, Receivers.

Filed in the U. S. District Court, Eastern District of Washington. June 13, 1921. W. H. Hare, Clerk. [31]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Bankrupt.

Order Allowing Appeal.

The foregoing petition of the Omak Warehouse and Storage Company, a corporation, and John Scott and W. H. Dickson, receivers thereof, for an appeal from that certain order made and entered in the above-entitled proceeding in bankruptcy on the 8th day of June, 1921, to the United States Circuit Court of Appeals for the Ninth Circuit, is hereby granted and the appeal allowed, and the bond on appeal is fixed in the sum of \$300.00.

Done in open court this 11th day of June, A. D. 1921.

FRANK H. RUDKIN.

Filed in the U. S. District Court, Eastern District of Washington. June 13, 1921. W. H. Hare, Clerk. [32]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STOR-
AGE COMPANY, a Corporation, Bankrupt.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, the Omak Warehouse and Storage Com-
pany, a corporation, and John Scott and W. H.
Dickson, receivers thereof, as principals, and the
National Surety Company, a body corporate of
New York and duly incorporated under the laws of
the said State of New York and authorized to
transact the business of surety in the State of
Washington, as surety, executing this bond in be-
half of said principals, are jointly and severally
held and firmly bound unto C. E. Blackwell & Com-
pany, a corporation, the Omak Trading Company,
a corporation, and Val. Middleton, petitioners in
the above-entitled cause, their heirs, executors,
administrators and assigns, in the full sum of Three
Hundred Dollars (\$300.00), for the payment of
which sum, well and truly to be made, we bind our-
selves, our and each of our successors, heirs, exe-
cutors, administrators and assigns, jointly and
severally firmly by these presents.

Sealed with our seals and dated this 16th day of
June, A. D. 1921,

THE CONDITION of this obligation is such that

WHEREAS, in the above-entitled court and action, an order was entered on the 8th day of June, 1921, declaring and adjudging the said Omak Warehouse & Storage Company, a corporation a bankrupt, and the said Omak Warehouse and Storage Company, a corporation, and John Scott and W. H. Dickson receivers thereof, having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit the [33] said order to continue in full force pending the determination of said cause on appeal, and a citation directed to the said C. E. Blackwell and Company, a corporation, and Omak Trading Company, a corporation, and Val. Middleton is about to be issued, citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT, if the said Omak Warehouse and Storage Company, a corporation, and John Scott and W. H. Dickson shall prosecute their said appeal to effect and answer all the damages and costs that may be awarded against them, if they fail to make their plea good, then the above obligation is to be void; otherwise to re-

main in full force and virtue.

OMAK STORAGE & WAREHOUSE CO.

JOHN SCOTT,

W. H. DICKSON,

Receivers.

By CHAS. H. LEAVY,

Their Attorney Herein.

NATIONAL SURETY COMPANY.

By JAMES O. BROWN,

Resident Vice-president.

[Seal]

By G. B. FERGUSON,

Resident Assistant Secretary.

Filed in the U. S. District Court, Eastern District of Washington. June 16, 1921. Wm. H. Hare, Clerk. Eva M. Hardin, Deputy. [34]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE CO. a Corporation, Bankrupt.

Assignment of Errors.

Comes now the Omak Warehouse and Storage Company, a corporation, and John Scott and W. H. Dickson, receivers thereof, and say that in the order made and entered in the above-entitled proceedings, on the 8th day of June, 1921, there is manifest error, and file the following assignment of errors

committed and happening in the said proceeding upon which they will rely in their appeal from said order:

1. In granting the petition of C. E. Blackwell & Company, a corporation, Omak Trading Company, a corporation, and Val Middleton, and adjudging the said Omak Warehouse and Storage Company, a corporation, a bankrupt.

2. In failing to deny the petition of the said C. E. Blackwell & Company, a corporation, Omak Trading Company, a corporation and Val Middleton to adjudge the said Omak Warehouse and Storage Company, a corporation, a bankrupt.

3. In granting the motion of petitioners to strike the answer of Omak Warehouse and Storage Company, a corporation.

4. In failing to deny the said motion to strike the answer of the said Omak Warehouse and Storage Company, a corporation.

5. In holding that the Omak Warehouse and Storage Company, a corporation, committed an act of bankruptcy within four months next prior to April 22, 1921, the date of filing the petition of C. E. Blackwell & Company, a corporation, Omak Trading Company, a corporation and Val Middleton. [35]

6. In not holding that the appointment of a temporary receiver by the State Court on December 2, 1920, was the act of bankruptcy.

7. In not holding that the order of the State Court on December 7, 1920, continuing the appoint-

ment of the temporary receiver was the time from which the act of bankruptcy would date.

8. In not holding that December 11th, 1920, was the time from which the Act of Bankruptcy would date.

9. In holding that January 12, 1921, the date of the appointment of a permanent receiver by the State Court, was the date fixing the act of bankruptcy.

P. D. SMITH,

CHAS. H. LEAVY,

Attorneys for Omak Warehouse and Storage Company, a Corporation.

Filed June 13, 1921. W. H. Hare, Clerk. [36]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE CO., a Corporation, Bankrupt.

Citation on Appeal.

The United States of America,—ss.

The President of the United States to C. E. Blackwell & Company, a Corporation, Omak Trading Company, a Corporation, and Val Middleton, GREETING:

YOU, AND EACH OF YOU, ARE HEREBY CITED AND ADMONISHED to be and appear at the United States Circuit Court of Appeals for the

Ninth Circuit, to be holden at San Francisco, in the State of California, on the 15th day of July, 1921, pursuant to an appeal filed in the office of the clerk of the District Court of the United States for the Eastern District of Washington, in the matter of the Omak Warehouse and Storage Company, Bankrupt, wherein the Omak Warehouse and Storage Company, a corporation, and John Scott and W. H. Dickson, Receivers thereof, are appellants, to show cause, if any there be, why the order adjudging the Omak Warehouse and Storage Company, a bankrupt in the said appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable Chief Justice of the Supreme Court of the United States, this 24th day of June, in the year of our Lord, 1921.

FRANK H. RUDKIN,

District Judge.

Filed in the U. S. District Court, Eastern District of Washington. June 24, 1921. W. H. Hare, Clerk. [37]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Bankrupt.

Praecepta for Transcript of Record

To the Clerk of the United States District Court
for the Eastern District of Washington, North-
ern Division.

YOU ARE HEREBY REQUESTED, in pre-
paring your return to the citation on appeal in the
above-entitled cause, to include therein the fol-
lowing:

1. Creditors' petition;
2. Answer to creditors' petition;
3. Motion to dismiss;
4. Memorandum opinion;
5. Order dismissing answer;
6. Petitions to intervene (2);
7. Order allowing intervention;
8. Order of adjudication;
9. Petition for appeal;
10. Order allowing appeal;
11. Bond on appeal;
12. Assignment of errors;
13. Citation;

which comprise all of the papers, records and
other proceedings which are necessary to the hear-
ing of the appeal in said matter in the United
States Circuit Court of Appeals, and that no other
papers, records or other proceedings than those
above mentioned are necessary to be included by
the clerk of said Court in making up his return
to said citation as a part of such record.

Dated this 20th day of June, A. D. 1921.

P. D. SMITH,

CHAS. H. LEAVY,

Attorneys for the Omak Warehouse & Storage
Company, John Scott and W. H. Dickson, Re-
ceivers thereof.

Filed in the U. S. District Court, Eastern Dis-
trict of Washington. June 24, 1921. W. H. Hare,
Clerk. [38]

No. 3618.

In the Matter of OMAK WAREHOUSE & STOR-
AGE CO., a Corporation, Bankruptcy.

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

I, W. H. Hare, Clerk of the United States Dis-
trict Court for the Eastern District of Washington,
do hereby certify that the foregoing typewritten
pages, to be a full, true, correct and complete copy
of so much of the record, papers, and orders, and
other proceedings in the above-entitled cause, as
called for in the praecipe of counsel of record
herein, as the same remains of record and on file in
the office of the clerk of said District Court, and
that the same constitutes the record on appeal to
the Circuit Court of Appeals for the Ninth Judi-
cial Circuit, San Francisco, California.

I further certify that I have attached and trans-
mit the original citation in this cause.

I further certify that the cost of preparing and certifying the foregoing transcript is the sum of Eighteen Dollars and 10/100 Dollars, and that the same has been paid by Charles H. Leavy, one of the solicitors for appellant,

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Spokane, in said District, this 27th day of June, 1921.

[Seal]

W. H. HARE,
Clerk. [39]

[Endorsed]: No. 3709. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Omak Warehouse and Storage Company, a Corporation, Bankrupt. Omak Warehouse and Storage Company, a Corporation, and John Scott and W. H. Dickson, Appellants, vs. C. E. Blackwell & Company, a Corporation, Omak Trading Company, a Corporation, and Val Middleton, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Filed June 30, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

3710
No.

IN THE
United States
Circuit Court of Appeals
For the Ninth Circuit

ANGELO H. ROSSI,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record

Upon Writ of Error to the District Court of the
United States for the District of Oregon.

FILED
JUL - 1 1931
F. D. MONKTON,
CLERK

No.

IN THE
United States
Circuit Court of Appeals
For the Ninth Circuit

ANGELO H. ROSSI,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record

Upon Writ of Error to the District Court of the
United States for the District of Oregon.

INDEX.

	Page
Arraignment	29
Assignment of Error	217
Bill of Exceptions	70
Bond on Writ of Error	253
Citation on Writ of Error	1
Clerk's Certificate	257
Demurrer to Indictment	30
Indictment	4
Motion in Arrest of Judgment	66
Motion for New Trial	41
Opinion overruling demurrer	34
Order allowing Writ of Error	252
Order overruling Motions for New Trial and in Arrest of.....	
.....Judgment	68
Petition for Writ of Error	214
Sentence	69
Trial Date Set	31
Verdict	39
Writ of Error	2

Names and Addresses of the Attorneys of Record:

BARNETT H. GOLDSTEIN,

1110 Wilcox Building, Portland, Oregon,

For the Plaintiff in Error.

LESTER W. HUMPHREYS,

United States Attorney,

JOHN C. VEATCH,

Assistant United States Attorney,

Old Post Office Building,

For the Defendant in Error.

CITATION ON WRIT OF ERROR

United State of America,
District of Oregon,—ss.

To Lester W. Humphreys, United States Attorney,
and John C. Veatch, Assistant United States
Attorney.

Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein Angelo H. Rossi is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 10th day of May, in the year of our Lord, one thousand, nine hundred and twenty-one.

CHAS. E. WOLVERTON,
Judge.

Due proof of service of the within citation on Writ of Error is hereby admitted this 10th day of May, 1921.

JOHN C. VEATCH,
Assistant U. S. Attorney

Filed May 10, 1921.

G. H. MARSH,
Clerk, U. S. District Court.

**In the United States Circuit Court of Appeals for
the Ninth Circuit.**

Angelo H. Rossi,

Plaintiff in Error,

vs.

The United States of America,

Defendant in Error.

The United States of America,—ss.

The President of the United States of America.
To the Judge of the District Court of the United
States for the District of Oregon:

Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Charles E. Wolverton, one of you, between The United States of America, Plaintiff and Defendant in Error, and Angelo H. Rossi, Defendant and Plaintiff in Error, a manifest error hath happened to the great damage of the said Plaintiff in Error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties

aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the HONORABLE EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, this 10th day of May, 1921.

G. H. MARSH,

Clerk of the District Court of the United States
for the District of Oregon.

(Seal of U. S. District Court, District of Oregon.)

**In the District Court of the United States for the
District of Oregon.**

March Term, 1920.

BE IT REMEMBERED, That on the 30th day of June, 1920, there was duly filed in the District

Court of the United States for the District of Oregon, an Indictment, in words and figures as follows, to-wit:

**In the District Court of the United States for the
District of Oregon.**

UNITED STATES OF AMERICA,

vs.

Fred Peterson, alias "Swede Whitey," Angelo
H. Rossi, William Brenner, Robert La Salle,
W. E. Smith and Dave Stein,

Defendants.

INDICTMENT for violation of Section 37 of the
United States Penal Code.

United States of America,

District of Oregon,—ss.

The Grand Jurors of the United States of America, for the District of Oregon, duly impaneled, sworn, and charged to inquire within and for said District, upon their oaths and affirmations, do find, charge, allege, and present:

That on, to-wit: on or about the 1st day of March, 1920, the exact date being to the Grand Jurors unknown, at Portland, in the State and District of Oregon, and within the jurisdiction of this

Court, Fred Peterson, alias "Swede Whitey," Angelo H. Rossi, Dave Stein, William Brenner, Robert LaSalle, and W. E. Smith, the defendants above named, did then and there, at said time and place, wilfully, knowingly, unlawfully, and feloniously conspire, combine, confederate, and agree together, between and among themselves and with divers and various other persons whose names are to the Grand Jurors unknown, to commit the acts made offenses and crimes by the laws of the United States, to-wit: by sections 148, 151, and 154 of the Penal Code of the United States, and to defraud the United States; that is to say, said defendants above named, and divers and various other persons whose names are to the Grand Jurors unknown, as aforesaid, did then and there at said times and place, knowingly, wilfully, unlawfully, and felonously conspire, combine, confederate, and agree together, between, and among themselves, as aforesaid, to devise and execute, and did devise and execute, a plot, plan, and scheme to falsely make and alter certain obligations and securities of the United States, to-wit: United States War Savings Certificates and United States War savings Certificate Stamps, and to pass, publish, utter, and sell said falsely made and altered obligations and securities of the United States and to have and keep the same in their possession and to conceal the same, with the intent and purpose on the part of them, the said defendants, to defraud the United States and individual persons whose names are to the Grand Jurors unknown, and to buy, receive, sell,

exchange, transfer, and deliver said falsely made and altered obligations and securities of the United States, with the intent and purpose on the part of them, the said defendants, that said falsely made and altered obligations and securities of the United States be passed, published, and used as true and genuine, and to defraud the United States by presenting for redemption and causing the United States to redeem and purchase said falsely made and altered obligations and securities of the United States; that it was a part and portion of said wilful, unlawful, and felonious conspiracy, confederation, combination, and agreement, so entered into by said defendants as aforesaid, that said plot, plan, and scheme to commit the acts made offenses and crimes by said sections 148, 151 and 154 of the United States Penal Code, aforesaid, and to defraud the United States as aforesaid, was to be carried out, affected, and put into operation by the following methods, plans, means, and manner, to-wit: that said defendant Fred Peterson, alias "Swede Whitey," and others whose names are to the Grand Jurors unknown, were to steal, take, and carry away from the owners and custodians thereof certain United States War Savings Certificates and United States War Savings Certificate Stamps; that thereupon and thereafter, said defendant Fred Peterson, alias "Swede Whitey", and others whose names are to the Grand Jurors unknown, were to remove from said United States War Savings Certificates certain United States War Savings Certifi-

cate Stamps thereunto attached and to remove and erase from the face of said United States War Savings Certificate Stamps so removed from said United States War Savings Certificates, as aforesaid, certain registration and identification numbers thereon; that thereupon and thereafter, said defendant Fred Peterson, alias "Swede Whitey", and others whose names are to the Grand Jurors unknown, were to pass, sell, transfer, and deliver said United States War Savings Certificate Stamps so removed from said United States War Savings Certificates and so altered as aforesaid, to said defendant Angelo H. Rossi; that said defendant Angelo H. Rossi was to buy, receive, keep in his, the said Angelo H. Rossi's, possession and conceal said United States War Saving Certificate Stamps so removed and so altered as aforesaid, and thereupon and thereafter was to procure blank United States War Savings Certificates and attach thereto said United States War Savings Certificate Stamps so removed and altered as aforesaid, and pass, sell, transfer, and deliver said United States War Savings Certificates so procured as aforesaid, and with said altered United States War Savings Certificate Stamps so attached as aforesaid, together with other United States War Savings Certificate Stamps so removed and so altered as aforesaid, to said defendants Robert LaSalle, William Brenner, W. E. Smith, and Dave Stein and divers and various other persons whose names are to the Grand Jurors unknown; that said defendants Robert LaSalle,

William Brenner, W. E. Smith, and Dave Stein, and others whose names are to the Grand Jurors unknown, were to buy, receive, have and keep in their, the last named defendants' possession and conceal said United States War Savings Certificates and United States War Savings Certificate Stamps so passed, sold, transferred, and delivered to them by said defendant Angelo H. Rossi, as aforesaid, and were thereupon and thereafter to pass, sell, transfer, and deliver said altered United States War Savings Certificates and said United States War Savings Certificate Stamps to various and divers persons whose names are to the Grand Jurors unknown; that it was a part and parcel of said unlawful and felonious conspiracy, confederation, combination, and agreement so entered into by said defendants as aforesaid, that said United States War Savings Certificates and United States War Savings Certificate Stamps should be procured, altered, passed, published, uttered, sold, transferred, exchanged, and delivered, and bought, received, kept, and concealed in the way and manner aforesaid, with the intent and purpose on the part of them, the said defendants, to defraud the United States and individual persons whose names are to the Grand Jurors unknown, and with the intent and purpose that said United States War Savings Certificates and United States War Savings Certificate Stamps, so altered as aforesaid, be passed, published, and used as true and genuine.

That said wilful, unlawful, and felonious conspiracy, confederation, combination and agreement,

aforesaid, so entered into by said defendant aforesaid, continued from the date of said conspiracy as aforesaid, until on or about the 20th day of March, 1920, the exact date being to the Grand Jurors unknown; that at and during all of the times between said dates, as aforesaid, said wilful, unlawful, and felonious conspiracy, confederation, combination and agreement was continuously in operation and in execution, and that at and during all of said times all of the above named defendants continued to knowingly, wilfully, unlawfully, and feloniously conspire, combine, confederate, and agree together, between, and among themselves to commit the offenses hereinbefore set forth.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

1. That, in pursuance and in furtherance of said wilful, unlawful, and felonious conspiracy, confederation, combination, and agreement and to accomplish the objects and purposes thereof, said defendant Fred Peterson, alias "Swede Whitey," and others whose names are to the Grand Jurors unknown, as aforesaid, on to-wit: the 3rd day of March, 1920, at Scio, in the State and District of Oregon, did then and there, at said time and place, steal, take, and carry away from The Scio State Bank, of Scio, Oregon, a corporation organized under the laws of the State of Oregon, certain United States War Savings Certificates and United States War Savings Certificates Stamps, then and

there owned by various individual persons, as hereinafter set forth, and then and there in the custody and control of said The Scio State Bank, of Scio, Oregon, to-wit: United States War Savings Certificate number 08538395, with 8 United States War Savings Certificate Stamps attached, belonging to Nancy D. Arnold; United States War Savings Certificates numbered 01332787, 01332788, 01336599, 01332844, 01332846, 01332847, 08538327, 08535950, 08530951, 08530952, with 20 United States War Savings Certificate Stamps attached to each, belonging to George M. Bilyeu; United States War Savings Certificates numbered 00236582, 0853298, 22663204, 421114533, 42114577, 42114607, 2653642, 2653612, 2653613, 01332864, 2653618, 2653626, with 20 United States War Savings Certificate Stamps attached to each, belonging to Daisy Buckner; United States War Savings Certificate number 01332863, with 8 United States War Savings Certificate Stamps attached and United States War Savings Certificate number 2653680, with 1 United States War Savings Certificate Stamp attached, belonging to Grace Bilyeu; United States War Savings Certificates number 08538327 and 19682570 with 20 United States War Savings Certificate Stamps attached to each, belonging to Melda Bilyeu; United States War Savings Certificate number 31607714, with 4 United States War Savings Certificate Stamps attached, belonging to Emma Cain; United States War Savings Certificates number 01332866, 01332867, 01332868, 01332869, 01332870, 01332871, 01332872, 01332873, 01332874, 01332876, with 20 United States

War Savings Certificate Stamps attached to each, belonging to Robert C. Daniel; United States War Savings Certificates numbered 08535978, 08535977, 08535976, with 20 United States War Savings Certificate Stamps attached to each, belonging to F. J. Denny; United States War Savings Certificates numbered 00236553, 00236552, 00236556, 00236559, 00236562, 00236566, 00236576, 00236591, 00236593, 00236600 with 20 United States War Savings Certificate Stamps attached to each, belonging to Elizabeth J. Ewing; United States War Savings Certificate number 42114506 with 10 United States War Savings Certificate Stamps attached, belonging to Cora W. Eichinger; United States War Savings Certificate numbered 18468999 and 2653645 with 1 United States War Savings Certificate Stamp attached to each, belonging to Ruth M. Eichinger; United States War Savings Certificates numbered 58338335, 58338336, 58338337, 58338338, 58338339, 58338340, 58338341, 58338342, 58338343, 58338344, with 20 United States War Savings Certificate Stamps attached to each, belonging to Guy Funk; United States War Savings Certificate number 03538334, with 20 United States War Savings Certificate Stamps attached, belonging to J. T. Funk; United States War Savings Certificates numbered 08538361, 08538362, 08538363, 08538364, with 20 United States War Savings Certificate Stamps attached to each, belonging to Mrs. S. O. Funk; United States War Savings Certificate number 08535975 with 5 United States War Savings Certificate Stamps attached, belonging to Wilbur Funk;

United States War Savings Certificate number 08523593, with 4 United States War Savings Stamps attached, belonging to Frankie Holub; United States War Savings Certificate number 08538312, with 20 United States War Savings Certificate Stamps attached, belonging to Mary Holub; United States War Savings Certificate number 19672430, with 12 United States War Savings Certificate Stamps attached, belonging to Joe Holub; United States War Savings Certificates numbered 01332853 19672475, 19672346, 42114549, 42114550, 42114551, 42114552, 42114553, 42114554, 42114555, with 20 United States War Savings Certificate Stamps attached to each, belonging to Anto Holub; United States War Savings Certificate number 19672438, with 20 United States War Savings Certificate Stamps attached, belonging to Emma Holub; United States War Savings Certificates numbered 00235612, 00236520, 00012379, 00236524, 00012371, with 20 United States War Savings Certificate Stamps attached to each, belonging to Edward D. Jones; United States War Savings Certificates numbered 00236513, 00236519, 00012380, 00236525, 00236539, 00012378, with 20 United States War Savings Certificate Stamps attached to each, belonging to Minnie V. Jones; United States War Savings Certificates numbered 01332901, with 12 United States War Savings Certificate Stamps attached to each, belonging to Fred Jones; United States War Savings Certificate number 00012468, with 3 United States War Saving Certificate Stamps attached, belonging to W. J. Kelly; United States War Savings

Certificates numbered 00012469 and 22664385, with 20 United States War Savings Certificate Stamps attached to each, belonging to W. R. Kelly; United States War Savings Certificate number 00236561, with 20 United States War Savings Certificate Stamps attached, belonging to Marjorie E. Moses; United States War Savings Certificate number 00236560, with 20 United States War Savings Certificate Stamps attached, belonging to Elizabeth T. Moses; United States War Savings Certificates numbered 2653605, with 20 United States War Savings Certificate stamps attached, and 31291568, with 2 United States War Savings Certificate Stamps attached, belonging to Napoleon B. Moses; United States War Savings Certificate number 01332878, with 20 United States War Savings Certificate Stamps attached, belonging to Ollie MacDonald; United States War Savings Certificates numbered 01332859, 18468965, 19672393, 19672392, 42114509, 42114510, 42114512, 42114513, 42114514, 42114515, with 20 United States War Savings Certificate Stamps attached to each, belonging to Vaclav Prokop; United States War Savings Certificates numbered 42114518, 42114519, 42114520, 42114521, 42114522, with 20 United States War Savings Certificate Stamps attached to each, belonging to Antonie Prokop; United States War Savings Certificate number 18468987, with 2 United States War Savings Certificate Stamps attached, belonging to Ephriam Piatt; United States War Savings Certificate number 19672476, with 12 United States War Savings Certificate Stamps attached, belonging to

William Phillips; United States War Savings Certificate number 19672477, with 12 United States War Savings Certificate Stamps attached, belonging to Elva Phillips; United States War Savings Certificate number 18468977, with 10 United States War Savings Certificate Stamps attached, belonging to Thomas P. Prospal; United States War Savings Certificate number 08538277, with 11 United States War Savings Certificate Stamps attached, belonging to Lulu Quinn; United States War Savings Certificates numbered 00236516, 00236526, 18468970, 01332860, 42114532, 22663202, 2653078, 42114575, 2653644, 2653609, 2653610, 2653641, 2653619, 2653628, 4211408, with 20 United States War Savings Certificate Stamps attached to each, belonging to Albert E. Randall; United States War Savings Certificates numbered 08538256, 42114534, 22663203, 42114576, 2653643, 2653608, 2653607, 2653606, 2653620, 2653627, with 20 United States War Savings Certificate Stamps attached to each, belonging to Melvina Randall; United States War Savings Certificates numbered 18468968, 08523607, 19672408, with 20 United States War Savings Certificate Stamps attached to each, belonging to Effie Rogers; United States War Savings Certificate numbered 19672326, with 5 United States War Savings Certificate Stamps attached, belonging to C. H. Rockwell; United States War Savings Certificate number 19672451, with 5 United States War Savings Certificate Stamps attached, belonging to Mary E. Richardson; United States War Savings Certificate number 19672449, with 6 United States War

Savings Certificate Stamps attached, belonging to Verlin Richardson; United States War Savings Certificate number 19672450, with 15 United States War Savings Certificate Stamps attached, belonging to Thomas A. Richardson; United States War Savings Certificate number 00236563, with 1 United States War Savings Certificate Stamp attached, belonging to John W. Scott; United States War Savings Certificate number 22663120, with 1 United States War Savings Certificate Stamp attached, belonging to Glenn A. Scott; United States War Savings Certificate number 22664392, with 20 United States War Savings Certificate Stamps attached, belonging to Frank Shuedler; United States War Savings Certificate number 08538368, with 7 United States War Savings Certificate Stamps attached, belonging to Elinor R. Shimanek; United States War Saving Certificates number 22664344, 22664345, 42114581, with 20 United States War Savings Certificate Stamps attached to each, belonging to C. F. Sargent; United States War Savings Certificate number 08423563, with 7 United States War Savings Certificate Stamps attached, belonging to C. A. Silbernagel; United States War Savings Certificate number 19672356, with 6 United States War Savings Certificate Stamps attached, belonging to Rosa Silbernagel; United States War Savings Certificates numbered 2653678, and 18468975, with 2 United States War Savings Certificate Stamps attached to each, belonging to Eldon Vaughan; United States War Savings Certificates numbered 00236522, 00236528, 00236529, 00236530, and

08535930, with 20 United State War Savings Certificate Stamps attached to each, belonging to William A. White; United States War Savings Certificate number 1846898, with 10 United States War Savings Certificate Stamps attached, belonging to James K. White; and United States War Savings Certificate number 19672338, with 10 United States War Savings Certificate Stamps attached, belonging to Charles A. White.

2. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confederation, combination, and agreement, and to accomplish the objects and purposes thereof, said defendant Fred Peterson, alias "Swede Whitey", and others whose names are to the Grand Jurors unknown, with the intent and purpose on the part of him, the said Fred Peterson, alias "Swede Whitey", and others whose names are to the Grand Jurors unknown, as aforesaid, to defraud the United States and individual persons whose names are to the Grand Jurors unknown, did, on, to-wit: on or about the 4th day of March, 1920, the exact date thereof being to the Grand Jurors unknown, at Portland, in the State and District of Oregon, then and there, at said time and place, remove from said United States War Savings Certificates the said United States War Savings Certificate Stamps thereunto attached, as aforesaid, and, at said time and place, did erase and remove from the face of said United States War Savings Certificate Stamps so removed from said United States War Savings Certificates

as aforesaid, a certain registration and identification number, to-wit: number 50819.

3. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confederation, combination, and agreement, and to accomplish the objects and purposes thereof, as aforesaid, said defendant Fred Peterson, alias "Swede Whitey", and others whose names are to the Grand Jurors unknown, on, to-wit: on or about the 5th day of March, 1920, the exact date thereof being to the Grand Jurors unknown, at Portland, in the State and District of Oregon, did, then and there, at said time and place, sell, pass, transfer, and deliver to said defendant Angelo H. Rossi said United States War Savings Certificate Stamps so removed from said United States War Savings Certificates and so altered as aforesaid, with the intent and purpose on the part of him the said Fred Peterson, alias "Swede Whitey", and others whose names are to the Grand Jurors unknown, as aforesaid, to defraud the United States and others whose names are to the Grand Jurors unknown, and with the intent that said United States War Savings Certificate Stamps so removed and altered as aforesaid be passed, published, and used as true and genuine.

4. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confederation, combination, and agreement aforesaid, and to accomplish the objects and purposes thereof aforesaid, said defendant Angelo H. Rossi, did, on, to-

wit: on or about the 5th day of March, 1920, at Portland, in the State and District of Oregon, buy and receive from said defendant Fred Peterson, alias "Swede Whitey", and others whose names are to the Grand Jurors unknown, as aforesaid, and have and keep in his, the said Angelo H. Rossi's, possession and conceal said United States War Savings Certificate Stamps so removed and so altered, as aforesaid, with the intent and purpose on the part of him, the said Angelo H. Rossi, to defraud the United States and individual persons whose names are to the Grand Jurors unknown, and with the intent and purpose that said altered United States War Savings Certificate Stamps be passed, published, and used as true and genuine, he, the said Angelo H. Rossi, knowing said United States War Savings Certificate Stamps to be altered in the way and manner aforesaid.

5. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confederation, combination, and agreement and to accomplish the objects and purposes thereof, aforesaid, said defendant Angelo H. Rossi, did, on, to-wit: on or about the 8th day of March, 1920, at Portland, in the State and District of Oregon, pass, sell, transfer, and deliver to said defendant Dave Stein 63 of said United States War Savings Certificate Stamps so removed and so altered as aforesaid, with the intent and purpose on the part of him, the said Angelo H. Rossi, to defraud the United States and individual persons whose names are to the Grand

Jurors, unknown, and with the intent that said altered United States War Savings Certificate Stamps be passed, published, and used as true and genuine, he, the said Angelo H. Rossi, then and there knowing said United States War Savings Certificate Stamps to be altered in the way and manner aforesaid.

6. That in pursuance and furtherance of said unlawful and felonious conspiracy, confederation, combination, and agreement and to accomplish the objects and purposes thereof, aforesaid, said defendant Dave Stein did, on, to-wit: on or about the 8th day of March, 1920, the exact date thereof being to the Grand Jurors unknown, at Portland, in the State and District of Oregon, buy and receive from said defendant Angelo H. Rossi and have and keep in his, the said Dave Stein's possession and conceal 63 United States War Savings Certificate Stamps so removed and so altered as aforesaid, with the intent and purpose on the part of him, the said Dave Stein, to defraud the United States and individual persons whose names are to the Grand Jurors unknown, and with the intent that said altered United States War Savings Certificate Stamps be passed, published, and used as true and genuine, he, the said Dave Stein, then and there knowing said United States War Savings Certificate Stamps to be altered in the way and manner aforesaid.

7. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confederation,

combination and agreement and to accomplish the objects and purposes thereof, aforesaid, said defendant Dave Stein did, on, to-wit: on or about the 9th day of March, 1920, the exact date thereof being to the Grand Jurors unknown, at Portland, in the State and District of Oregon, sell, transfer and deliver to one Phillip Tobin 63 United States War Savings Certificate Stamps so removed and so altered as aforesaid, with the intent and purpose on the part of him, the said Dave Stein, to defraud said Phillip Tobin and others whose names are to the Grand Jurors unknown, and with the intent that said altered United States War Savings Certificate Stamps be passed, published, and used as true and genuine, he, the said Dave Stein, then and there knowing said United States War Savings Certificate Stamps to be altered in the way and manner aforesaid.

8. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confederation, combination, and agreement and to accomplish the objects and purposes thereof aforesaid, said defendant Angelo H. Rossi did, on, to-wit: on or about the 10th day of March, 1920, the exact date thereof being to the Grand Jurors unknown, at Portland, in the State and District of Oregon, pass, sell, transfer, and deliver to said defendant W. E. Smith 50 United States War Savings Certificate Stamps so removed and so altered as aforesaid, with the intent and purpose on the part of him, the said Angelo H. Rossi, to defraud the United States and individual

persons whose names are to the Grand Jurors unknown, and with the intent that said altered United States War Savings Certificate Stamps be passed, published, and used as true and genuine, he, the said Angelo H. Rossi, then and there knowing said United States War Savings Certificate Stamps to be altered in the way and manner aforesaid.

9. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confederation, combination and agreement and to accomplish the objects and purposes thereof, aforesaid, said defendant W. E. Smith, did, on, to-wit: on or about the 10th day of March, 1920, the exact date thereof being to the Grand Jurors unknown, at Portland, in the State and District of Oregon, buy and receive from said defendant Angelo H. Rossi and have and keep in his, the said W. E. Smith's possession and conceal 50 United States War Savings Certificate Stamps so removed and so altered as aforesaid, with the intent and purpose on the part of him, the said W. E. Smith, to defraud the United States and others whose names are to the Grand Jurors unknown, and with the intent that said altered United States War Savings Certificate Stamps be passed, published, and used as true and genuine, he, the said W. E. Smith, then and there knowing said United States War Savings Certificate Stamps to be altered in the way and manner aforesaid.

10. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confeder-

tion, combination, and agreement and to accomplish the objects and purposes thereof, aforesaid, said defendant W. E. Smith did, on, to-wit: on or about the 10th day of March, 1920, the exact date thereof being to the Grand Jurors unknown, at Portland, in the State and District of Oregon, pass, sell, transfer, and deliver to one Julius Herns 50 United States War Savings Certificate Stamps so removed and so altered as aforesaid, with the intent and purpose on the part of him, the said W. E. Smith, to defraud said Julius Herns and others whose names are to the Grand Jurors unknown, and with the intent that said altered United States War Savings Certificate Stamps be passed, published, and used as true and genuine, he, the said W. E. Smith, then and there knowing said United States War Savings Certificate Stamps to be altered in the way and manner aforesaid.

11. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confederation, combination, and agreement and to accomplish the objects and purposes thereof aforesaid, said defendant Angelo H. Rossi, did, on, to-wit: on or about the 10th day of March, 1920, the exact date thereof being to the Grand Jurors unknown, at Portland, in the State and District of Oregon, pass, sell, transfer, and deliver to said defendant William Brenner 214 United States War Savings Certificate Stamps so removed and so altered as aforesaid, with the intent and purpose on the part of him, the said Angelo H. Rossi, to defraud the United States

and individual persons whose names are to the Grand Jurors unknown, and with the intent that said altered United States War Savings Certificate Stamps be passed, published, and used as true and genuine, he, the said Angelo H. Rossi, then and there knowing said United States War Savings Certificate Stamps to be altered in the way and manner aforesaid.

12. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confederation, combination, and agreement and to accomplish the objects and purposes thereof aforesaid, said defendant William Brenner did, on, to-wit: on or about the 10th day of March, 1920, the exact date thereof being to the Grand Jurors unknown, at Portland, in the State and District of Oregon, buy and receive from said defendant Angelo H. Rossi, and have and keep in his, the said William Brenner's possession and conceal 214 United States War Savings Certificate Stamps so removed and so altered as aforesaid, with the intent and purpose on the part of him, the said William Brenner, to defraud the United States and individual persons whose names are to the Grand Jurors unknown, and with the intent that said altered United States War Savings Certificate Stamps be passed, published, and used as true and genuine, he, the said William Brenner, then and there knowing said United States War Savings Certificate Stamps to be altered in the way and manner aforesaid.

13. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confeder-

tion, combination, and agreement and to accomplish the objects and purposes thereof aforesaid, said defendant William Brenner did, on, to-wit: the 11th day of March, 1920, at Portland, in the State and District of Oregon, pass, sell, transfer and deliver to said defendant Robert LaSalle 66 United States War Saving Certificate Stamps so removed and so altered as aforesaid with the intent and purpose on the part of him, the said William Brenner, to defraud the United States and individual persons whose names are to the Grand Jurors unknown, and with the intent that said altered United States War Savings Certificate Stamps be passed, published, and used as true and genuine, he the said William Brenner then and there knowing said United States War Savings Certificate Stamps to be altered in the way and manner aforesaid.

14. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confederation, combination, and agreement and to accomplish the objects and purposes thereof aforesaid, said defendant Robert LaSalle did, on, to-wit: on the 11th day of March, 1920, at Portland, in the State and District of Oregon, pass, sell, transfer, and deliver to one George R. Randolph 66 United States War Savings Certificate Stamps so removed and so altered as aforesaid, with the intent and purpose on the part of him, the said Robert LaSalle to defraud the United States and individual persons whose names are to the Grand Jurors unknown, and with the intent that said altered United

States War Savings Certificate Stamps be passed, published, and used as true and genuine, he the said Robert LaSalle, then and there knowing said United States War Savings Certificate Stamps to be altered in the way and manner aforesaid.

15. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confederation, combination, and agreement and to accomplish the objects and purposes thereof aforesaid, said defendant William Brenner did, on, to-wit: the 17th day of March, 1920, at Portland, in the State and District of Oregon, pass, sell, transfer, and deliver to said defendant Robert LaSalle 148 United States War Savings Certificate Stamps so removed and so altered as aforesaid, with the intent and purpose on the part of him, the said William Brenner, to defraud the United States and individual persons whose names are to the Grand Jurors unknown, and with the intent that said altered United States War Savings Certificate Stamps be passed, published, and used as true and genuine, he, the said William Brenner, then and there knowing said United States War Savings Certificate Stamps to be altered in the way and manner aforesaid.

16. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confederation, combination and agreement and to accomplish the objects and purposes thereof aforesaid, said defendant Robert LaSalle, did, on, to-wit: the 17th day of March, 1920, at Portland, in the State and

District of Oregon, buy and receive from said defendant William Brenner and have and keep in his, the said Robert LaSalle's possession and conceal 148 United States War Savings Certificate Stamps so removed and so altered as aforesaid, with the intent and purpose on the part of him, the said Robert LaSalle to defraud the United States and others whose names are to the Grand Jurors unknown, and with the intent that said altered United States War Savings Certificate Stamps be passed, published, and used as true and genuine, he, the said Robert LaSalle, then and there knowing said United States War Savings Certificate Stamps to be altered in the way and manner aforesaid.

17. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confederation, combination, and agreement and to accomplish the objects and purposes thereof aforesaid, said defendant Robert LaSalle did, on, to-wit: the 17th day of March, 1920, at Portland, in the State and District of Oregon, pass, sell, transfer, and deliver to one George R. Randolph 148 United States War Savings Certificate Stamps so removed and so altered as aforesaid, with the intent and purpose on the part of him, the said Robert LaSalle, to defraud the United States and individual persons whose names are to the Grand Jurors unknown, and with the intent that said altered United States War Savings Certificate Stamps be passed, published, and used as true and genuine, he, the said Robert LaSalle, then and there knowing said United

States War Savings Certificate Stamps to be altered in the way and manner aforesaid.

18. That in pursuance and in furtherance of said unlawful and felonious conspiracy, confederation, combination, and agreement and to accomplish the objects and purposes thereof aforesaid, said defendant Angelo H. Rossi did, on, to-wit: on or about the 17th day of March, 1920, the exact date thereof being to the Grand Jurors unknown, at Portland, in the State and District of Oregon, procure certain blank United States War Savings Certificates, to-wit: United States War Savings Certificates of the series of 1918 respectively numbered 05082990, 05082988, 05082969, 05082993, 05082989, 05082968, and attached to each of said United States War Savings Certificates so procured 20 United States War Savings Certificate Stamps so removed and so altered as aforesaid, with the intent and purpose on the part of him, the said Angelo H. Rossi, to defraud the United States and individual persons whose names are to the Grand Jurors unknown, and with the intent that said United States War Savings Certificates so altered as aforesaid be passed, published, and used as true and genuine, he, the said Angelo H. Rossi, then and there knowing said United States War Savings Certificate Stamps so attached to said United States War Savings Certificates so procured as aforesaid, to have been removed from other United States War Savings Certificates and altered in the way and manner aforesaid, contrary to the form of the

statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 30th day of June, 1920.

P. A. YOUNG,
Foreman, United States Grand Jury.

JOHN C. VEATCH,
Assistant United States Attorney.

Endorsed "A True Bill."

P. A. YOUNG,
Foreman, Grand Jury.

Filed June 30, 1920.

G. H. MARSH, Clerk.

And afterwards, to-wit, on Monday, the 26th day of July, 1920, the same being the 19th judicial day of the regular July term of said Court; present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

The United States of America,

vs.

Fred Peterson, alias "Swede Whitey",
Angelo H. Rossi, William Brenner,

Robert La Salle, W. E. Smith and
Dave Stein.

Now at this day come the plaintiff by Mr. John C. Veatch, Assistant United States Attorney, and the defendants William Brenner in his own proper person and by Mr. Barnett H. Goldstein, of counsel, and Angelo H. Rossi by Mr. Barnett H. Goldstein, of counsel. Whereupon said defendant William Brenner being duly arraigned upon the indictment hereinfi said defendants William Brenner and Angelo H. Rossi now in open court file their demurrer to said indictment, and thereupon upon motion of said defendant

IT IS ORDERED that said demurrer be and the same is hereby set for hearing for Monday, August 23, 1920.

And Afterwards, to wit, on the 26th day of July, 1920, there was duly filed in said Court, a Demurrer to Indictment in words and figures, as follows:

**In the District Court of the United States for the
District of Oregon.**

The United States of America,

Plaintiff,

vs.

Fred Peterson, alias "Swede Whitey",
Angelo H. Rossi, William Brenner,

Robert La Salle, W. E. Smith and
Dave Stein, Defendants.

Come now the defendants Angelo H. Rossi and William Brenner and demur to the indictment herein filed against them and each of them, upon the grounds and for the reasons, as follows:

I.

That said indictment does not state facts sufficient to constitute an offense against the laws of the United States and is insufficient in law to charge a crime against the said defendants or either of them.

II.

That the indictment is duplicitous in that two separate and distinct offenses are set out in one count; to-wit (1) the offense of conspiring to commit an offense made a crime by the laws of the United States, and (2) the offense of conspiring to defraud the United States.

BARNETT H. GOLDSTEIN,
Attorney for defendants Angelo
H. Rossi and William Brenner.

I, Barnett H. Goldstein, do hereby certify that I prepared the foregoing demurrer and that the same is filed in good faith and not for the purpose

of delay, and in my opinion same is well founded in law.

BARNETT H. GOLDSTEIN.

Due, timely and legal service by copy, admitted at Portland, Oregon, this 26th day of July, 1920.

JOHN C. VEATCH,
Attorney for Plaintiff.

Filed, July 26, 1920.

G. H. MARSH, Clerk.

And Afterwards, to wit, on Thursday, the 29th day of July, 1920, the same being the 22nd Judicial day of the Regular July term of said Court; present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

The United States of America,

vs.

Fred Peterson, Angelo H. Rossi,
Robert LaSalle, et al.

Now at this day upon motion of Mr. John C. Veatch, Assistant United States Attorney,

IT IS ORDERED that this cause be and the same is hereby set for trial for Tuesday, October 26, 1920.

And afterwards, to-wit, on Tuesday, the 7th day of September, 1920, the same being the 56th judicial day of the regular July term of said Court; present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

The United States of America,

vs.

Fred Peterson, Angelo H. Rossi
and William Brenner.

Now at this day come the plaintiff by Mr. John C. Veatch, Assistant United States Attorney, and the defendant Fred Peterson above named by Mr. Paul M. Long, of counsel, and defendant Angelo H. Rossi and William Brenner by Mr. Barnett H. Goldstein, of counsel. Whereupon this cause comes on to be heard by the court upon the demurrers of defendants above named to the indictment on file herein. And the court, having heard the arguments of counsel, will advise thereof.

And afterwards, to-wit, on Monday, the 18th day of October, 1920, the same being the 91st judicial day of the regular July term of said Court; present the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

The United States of America,

vs.

Fred Peterson, Angelo H. Rossi,
William Brenner, et al.

This cause was heard upon the demurrers of the defendants above named, Fred Peterson, Angelo H. Rossi and William Brenner, to the indictment herein, plaintiff appearing by Mr. Hall S. Lusk, Assistant United States Attorney, and defendants by Mr. B. H. Goldstein and Mr. Paul M. Long of counsel. Upon consideration whereof

IT IS ORDERED that each of said demurrers be and the same is hereby overruled.

And afterwards, to-wit, on the 19th day of October, 1920, there was duly filed in said Court, the opinion of Judge Wolverton in words and figures as follows, to-wit:

**In the District Court of the United States for the
District of Oregon.**

The United States of America,

vs.

Fred Peterson, alias "Swede Whitey",
Angelo H. Rossi, William Brenner,
Robert LaSalle, W. E. Smith, and
Dave Stein, Defendants.

Lester W. Humphreys, United States Attorney,
John C. Veatch, Assistant United States Atty.;
Barnett H. Goldstein for the Defendants.

WOLVERTON, District Judge: (Memo).

This is an indictment for conspiracy to commit certain offenses against the United States, and to defraud the United States. The alleged offenses are those denounced by sections 148, 151, and 154 of the Penal Code. The sufficiency of the indictment is challenged by demurrer, for duplicity.

It is first contended that the indictment is double in that it attempts to charge that defendants conspired to commit offenses against the United States, and also to defraud the United States; it being argued that each of these is made a separate offense under the conspiracy statute, Section 37 of the Criminal Code. Whatever may be the purpose of the statute in making them separate offenses, the objection is obviously not well taken in the present case, as the offenses which is charged the defendants conspired to commit comprise as one of their elements the intent to defraud the United States. Therefore, the allegation of conspiracy to defraud in connection with the purpose to commit the offense does not render the indictment subject to the objection.

The second contention is that the indictment charges a conspiracy to commit several different offenses involving different penalties, and hence is

subject to the objection of duplicity. This is not fatal. As the court says, in *Joplin Mercantile Co. v. United States*, 213 Fed. 926, 929,

“That one conspiracy could be formed to violate any number of laws of the United States seems beyond question.”

There is but one penalty prescribed for the offense of conspiracy, and that is the offense for which the defendants are to be tried. The present indictment affords an apt illustration as to why it is wholly appropriate to indict for a conspiracy to commit several offenses against the United States. The very scheme alleged involves the commission of all these offenses in carrying out the purpose of the alleged conspirators.

The case of *John Gund Brewing Co. v. United States*, 204 Fed. 17, 21, is opposed to this view, but it does not satisfy my judgment. I have examined the authorities cited to uphold it, and find none of them to the point.

The demurrer will be overruled.

Filed, October 18, 1920.

G. H. MARSH, Clerk.

And afterwards, to wit, on Tuesday, the 26th day of October, 1920, the same being the 98th judicial day of the regular July term of said Court;

present the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

The United States of America,

vs.

Fred Peterson, Angelo H. Rossi,
William Brenner, Robert LaSalle,
W. E. Smith and Dave Stein.

Now at this day come the plaintiff by Mr. John C. Veatch, Assistant United States Attorney, and the defendants named each in his own proper person and defendants William Brenner, Angelo H. Rossi and W. E. Smith by Mr. Barnett H. Goldstein, of counsel, defendant Robert LaSalle, by Mr. Frank Lonergan and Mr. John Stevenson, of counsel, defendant Dave Stein by Mr. Alex Bernstein and Mr. Solis D. Cohen, of counsel, and defendant Fred Peterson by Mr. Paul M. Long of counsel. Whereupon this being the day set for the trial of this cause now come the following named jurors to try the issue joined, viz: George B. Zimmerman, George M. Shaver, Stephen Poole, William Pringle, Isador Greenbaum, Fred H. Moore, Arch C. Sinclair, Carl G. Liebe, Walter B. Peacock, Fred S. Pickering, William Nelson and Edward Northrup; twelve good and lawful men of the district who being accepted by both parties, are duly impaneled and sworn. And the hour of adjournment having arrived, the trial

of this cause is continued to to-morrow, Wednesday, October 27, 1920.

And afterwards, to-wit, on Tuesday, the 9th day of November, 1920, the same being the 7th judicial day of the regular November term of said Court; present the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

The United States of America,

vs.

Fred Peterson, alias "Swede Whitey",

Angelo H. Rossi, William Brenner,

Robert LaSalle, W. E. Smith and

Dave Stein,

Defendants.

Now at this day come the plaintiff by Mr. John C. Veatch, Assistant United States Attorney, and the defendants above named each in his own proper person and by his counsel as of yesterday. Whereupon the jurors impaneled herein come into court, answer to their names, and return to the court the following verdict, viz:

"We, the jury duly impaneled to try the above cause, do find the defendant FRED PETERSON, alias SWEDE WHITEY, GUILTY as charged in the indictment, and

The defendant ANGELO H. ROSSI, GUILTY as charged in the indictment, and

The defendant WILLIAM BRENNER, CANNOT AGREE, and

The defendant ROBERT LA SALLE, CANNOT AGREE, and

The defendant W. E. SMITH, CANNOT AGREE, and

The defendant, DAVE STEIN, NOT GUILTY as charged in the indictment herein.

Dated at Portland, Oregon, this 9th day of November, 1920.

Fred H. Moore, Foreman."

which verdict is received by the court and ordered to be filed. Whereupon it is ORDERED that the defendant Dave Stein go hence without day, and that the sureties upon his recognizance be and they are hereby exonerated from further liability in this behalf. And upon motion of defendants Fred Peterson and Angelo H. Rossi,

IT IS ORDERED that the said defendants be and they are each hereby allowed 30 days from this date to file a motion for a new trial and to present a bill of exceptions herein.

And afterwards, to wit, on the 9th day of November, 1920, there was duly filed in said Court, the Verdict in words and figures as follows, to-wit:

**In the District Court of the United States for the
District of Oregon.**

The United States of America,

vs.

Fred Peterson, alias Swede Whitey,
Angelo H. Rossi, William Brenner,
Robert LaSalle, W. E. Smith and
Dave Stein, Defendants.

VERDICT.

We, the jury duly impaneled to try the above entitled cause, do find the defendant FRED PETERSON, alias SWEDE WHITEY, guilty as charged in the indictment, and

The defendant ANGELO H. ROSSI, guilty as charged in the indictment, and

The defendant WILLIAM BRENNER, cannot agree, and

The defendant, ROBERT LA SALLE, cannot agree, and

The defendant, W. E. SMITH, cannot agree, and

The defendant, DAVE STEIN, not guilty as charged in the indictment herein.

Dated at Portland, Oregon, this 9th day of November, 1920.

Fred H. Moore, Foreman.

Filed, November 9, 1920.

G. H. Marsh, Clerk.

And afterwards, to-wit: on Monday, the 6th day of December, 1920, the same being the 29th judicial day of the regular November term of said Court; present the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

The United States of America,

vs.

Fred Peterson, Angelo H. Rossi et al.

Now at this day come the plaintiff by Mr. John C. Veatch, Assistant United States Attorney and the defendant Fred Peterson above named in his own proper person and by Mr. Paul M. Long of counsel, and the defendant Angelo H. Rossi in his own proper person and by Mr. Barnett H. Gold-

stein, of counsel. Whereupon this cause comes on to be heard upon the motion of defendant Fred Peterson to set aside the verdict heretofore entered herein and for a new trial. And the court having heard the arguments of counsel.

IT IS ORDERED that this motion be and the same is hereby denied, and an exception allowed to said ruling. Whereupon upon motion of defendant Angelo H. Rossi

IT IS ORDERED that he be and he is hereby allowed to Monday, December 13, 1920, to file a motion herein for a new trial and to submit his bill of exceptions herein.

And afterwards, to-wit: on the 10th day of January, 1921, there was duly filed in said Court, a Motion for New Trial in words and figures as follows, to-wit:

MOTION FOR NEW TRIAL

**In the District Court of the United States for the
District of Oregon.**

The United States of America,

Plaintiff,

vs.

A. H. Rossi,

Defendant.

Comes now the defendant in the above entitled case by Barnett H. Goldstein, his attorney, and moves the Court to set aside the verdict of the jury rendered herein and to grant a new trial, for the following reasons and upon the following grounds:

I.

That the Court erred in over-ruling the defendant's demurrer to the indictment.

II.

That the record fails to show that the defendant has pleaded to this indictment as required by law and therefore no issue being had, there was nothing for the jury to try.

III.

That the defendant was prejudiced at the outset of his trial and during the course of his trial by articles appearing in newspapers then and there published and generally circulated in the City of Portland, Oregon, where said cause was being tried, which said articles purporting to discuss and comment upon this case were of such a nature as to arouse public prejudice against this defendant and were thereby calculated to prejudice the jury against him; that true and correct copies of such newspaper articles are hereto attached and made a

part of the affidavit of Barnett H. Goldstein, hereto annexed and made a part hereof.

IV.

That the defendant was prejudiced by remarks of the Court made during the course of the trial, as follows:

(a) During the examination of Julius Hems, a witness for the Government, when objection was interposed to the admissibility of statements made subsequent to the termination of the conspiracy, the Court made the following remarks:

“As to the objection that there has been no conspiracy proven here, you do not care to force the court to recount the testimony about that. I will overrule the objection.”

(b) During the examination of Julius Hems, a witness for the Government, when questioned as to the manner of eliciting information from him by government officers concerning which he testified that before making any statements he was told by John Price, connected with the Department of Justice, that he had better make a clean breast of it or go to jail (308), the Court at the conclusion of his testimony asked the following questions:

“COURT: Have you told the truth about that?

A. Yes, sir.

COURT: And nothing else?

A. Nothing else.

COURT: I think that is enough."

(e) During the examination of William Glover, a witness for the defendant, and a former United States Secret Service operative, when questioned by the attorney for defendant, testified as follows:

"Q. Did you come to me and ask me to put you on the stand?

A. I did, sir, night before last.

Q. Why did you ask that?

A. When I saw—the reason for asking you to put me on the stand—I saw that Mr. Veatch was not going to put me on the stand so I could explain away some of this newspaper notoriety that has been filtering here for the last six months; so I came to you and requested you to give me a chance to get the truth before this court and my friends here.

Q. This was a personal request of me as a friend of yours?

A. Yes, absolutely."

Whereupon the Court intervened as follows:

"COURT: Who is your friend?

A. Well, I have friends all over the coast, your Honor.

COURT: I thought you meant Rossi."

(d) During the examination of William Glover, a witness for the defendant, and a former United States Secret operative, when cross-examined by the Assistant-United States Attorney, he testified as follows:

"A. This is the way the Secret Service operates, which I testified to yesterday—if a man comes into our office that is a crook or has been, and he says that a man so and so is, he believes, —is going into counterfeiting, and has asked him to go into counterfeiting, we very oftentimes hire him as an informant, with the distinct understanding that he is to get what information he can, but under no circumstances is he to manufacture any money or violate the statute, because he would be just as liable as the men that made the money themselves."

Whereupon the Court intervened as follows:

"COURT: In other words, you make a stool pigeon out of him?

A. Yes, sir.

COURT: Did you attempt to do that with Rossi?

A. Well, that was part of the information, your Honor, that he was to furnish, that Mr. Walters made a condition as to keeping him under cover.

COURT: Was Rossi to act as stool pigeon in order to pick up information for you?

A. That is practically the matter of the fact, your Honor."

(e) During the examination of William Glover, a witness for the defendant, and a former United States Secret Service operative, the Court questioned him as follows:

"Q. I am asking you whether or not Rossi told you that he had sold or delivered any of these stamps to other parties.

A. No. No, sir.

Q. He left the impression with you that he was perfectly innocent himself?

A. Yes, sir. He simply mentioned the stamps that he had—the Swede Peterson stamps, said that he didn't—he told me that he didn't know that they were crooked.

Q. So that he was not telling you the whole story?

A. Well, I imagine not from what later developed, your Honor. No question about that.

Q. That is all."

V.

That the Court erred in the admission of the following evidence to which exception was duly made by the defendant:

(a) In permitting Miss Daisy Buckner to testify as to the registry of War Savings Certificates Stamps on the ground that there was no charge in the indictment that the conspiracy contemplated the possession or sale of stamps that had been registered. (P. 12).

(b) In permitting William Bryon to testify as to admissions made by the defendant upon the ground that such statements had been induced by the promise of immunity theretofore granted to said defendant. (P. 25).

(c) In permitting William Bryon to testify orally as to admissions made by the defendant, which admissions had theretofore been reduced to writing and his written transcript was in the possession or under the control of the witness, on the ground that the written transcript was the best evidence. (P. 31).

(d) In permitting William Hyde to testify as to the condition of certain stamps that were in the possession of Mr. Randolph, upon the ground that no proof had been offered tending to show that those stamps were the identical stamps, or in any wise involved in the specific stamp transactions in the indictment. (P. 134).

(e) In permitting P. A. Young to testify as to admissions made by the defendant from notes that were not taken by him, on the ground that the best

evidence was the testimony of the man who made the notes.(P. 182).

(f) In permitting T. M. Word to testify from a certain report he made without permitting counsel for the defendant to examine such report, upon the ground that the defendant was entitled to know and cross-examine him as to the basis for making such report. (P. 265).

(g) In permitting George H. Marsh to testify in the government case in chief as to a former conviction of one of the defendants named Peterson, on the ground that such evidence was proof of another crime and thereby tended to prejudice all defendants jointly indicted and tried with Peterson. (P. 322).

(h) In permitting J. M. Riley to testify and through him to introduce certain stamps that were handed to him by the United States attorney in an effort to connect such stamps with those Mr. Randolph had received from one of the defendants and which in turn, he testified had been sent to a Mr. McCann in San Francisco, on the ground that there had been no evidence offered to connect the stamps that Mr. McCann had with those that subsequently came into the possession of the United States attorney's office. (P. 335).

VI.

That the Court erred in excluding the following evidence offered on behalf of defendant, to which exception was dully taken:

(a) In refusing P. A. Young permission to state that Mr. Glover had testified before a Grand Jury that he had promised immunity to Rossi for the information that he gave. (P. 189).

(b) In refusing W. A. Glover permission to state what the defendant told him concerning a conversation had with Mr. Bryon regarding the matter of immunity. (P. 385).

VII.

That the Court erred in denying the motion of the defendant to strike out all testimony of the Government witnesses as to admissions made to them by the defendant subsequent to the promise of immunity theretofore accorded to him by Mr. Glover and Mr. Walters, Secret Service operatives, in charge of this investigation. (P. 422).

VIII.

That at the close of all the evidence in the case and after the Court had ruled that the testimony of William Bryon should be stricken out on the ground that the admissions made by the defendant had been induced by the promise of immunity theretofore given to him, the Court erred in failing to give a mistrial on the ground of the highly prejudicial testimony of Mr. Bryon already before the jury. (P. 585).

IX.

That the Court erred in holding that the admissions of the defendant made before the Grand Jury were not induced or encouraged by the promise of immunity theretofore granted him. (P. 588).

X.

That the Court erred in refusing to direct a verdict of not guilty at the close of the evidence. (P. 569).

XI.

That the Court erred in instructing the jury as follows:

(a) In giving the following instruction:

“The only offense with which the defendants are charged, under the indictment, is that of conspiracy. That is the only cause on trial here, and you should confine your inquiry to that cause alone; and unless the defendants, or two or more of them, are guilty of that particular offense, they must be acquitted.

“You are not to understand, however, that you are not to take into consideration what the defendants, or any of them, have done, according as the evidence may tend to show, conducing to their inculpation. You should examine very carefully all the competent evidence offered with respect to the declarations and acts and

demeanor of all the defendants, as it relates to these War Savings Certificates and War Savings Certificate Stamps, in order to ascertain, if possible, how they came into the possession of the defendants, or any of them, if they ever had such possession; as to whether they were falsely made or altered by them, or any of them, if at all; as to whether they were sold or transferred, or received by them, or any of them; and as to whether they, or any of them, were uttered or passed as true and genuine; all for the purpose of determining whether the defendants, or any two or more of them, conspired together, as alleged, to commit these offenses, or any of them, or to defraud the United States." (P. 600).

and in not explaining such instruction as requested by the defendant:

"MR. GOLDSTEIN: "I also call your Honor's attention to an instruction that I think might be misunderstood. Your Honor stated at the outset that these defendants are not on trial for the substantive offenses themselves. That is, they are not on trial for receiving altered obligations or having in possession altered obligations, or passing altered obligations, but they are charged with conspiring to have these things and to do those things; but that they may consider the admissions and the demeanor of the defendants. I think that is a little confusing, in that it is my contention that the proof of a conspiracy cannot be predicated upon admissions of the defendants themselves as to any part in their transaction; that the proof of conspiracy must be established beyond an admission." (P. 668).

(b) In giving the following instruction:

"I further instruct you that a removal of the stamps from the certificate, if done with intent to defraud, would be tantamount to an alteration of a Government obligation, and would, in effect, render it a falsely made certificate or obligation within the purview of section 148 of the Penal Code, and would constitute a violation thereof. (P. 603).

(c) In giving the following instruction, on the ground that there was no charge in the indictment that any of these stamps had been registered:

"So if one should erase the registration number from the face of the stamp, or the owner's name from the certificate, with the intent to defraud, he would be guilty of an alteration of such certificate, and would commit the offense denounced by section 148." (P. 604).

(d) In giving the following instruction:

"I instruct you, however, that the statement made by Rossi in giving evidence (before the grand jury) is not to be so disregarded by you. There is evidence tending to show that Rossi appeared before the grand jury voluntarily, and of his own accord, and, although warned that whatever statement he might make would be used in evidence against him, he notwithstanding, gave such evidence without insisting upon his immunity. The evidence, therefore, of Mr. Young, the foreman of the grand jury, was competent and pertinent to prove the admissions of Rossi with reference to the stamp transac-

tions, and you are to regard these admissions for whatever tendency they may have, if any, to show Rossi's connection with the alleged conspiracy." (P. 607).

(e) In giving the following instruction, on the ground that there was no evidence in the case that any of these stamps were stolen by any of the defendants:

"You will inquire whether the stamps were stolen, and if so, whether by either of the defendants. And in this relation I may say to you that the possession of recently stolen property affords a strong inference that the property was stolen by the person having it in his possession." (P. 611).

(f) In giving the following instruction:

"Now, gentlemen of the jury, the first question that you propound is the following: Does a stamp simply by being removed from a certificate, said certificate not being registered, become an altered stamp?

"To that I answer, that if the certificate has a stamp attached and the name of the party written upon the certificate, and the stamp thereafter has been removed with intent to defraud, then the defendant would be guilty whether the certificate or stamp was registered or not." (P. 619).

(g) In giving the following instruction, on the ground that there was no evidence in this case that

any of these stamps were stolen by any of the defendants and no charge in the indictment that the defendants conspired to steal altered stamps, or have stolen altered stamps in their possession, knowing them to be stolen:

“The next question you ask is this: If defendants thought at the time that they were handling stolen stamps, but did not know they were altered registered stamps, could we find them guilty on this indictment?

“My answer to that is, that if the defendants were handling these stamps knowing them to be stolen, and they handled them with intent to defraud the United States, then they would be within the purport of this indictment.” (P. 620).

XII.

That the Court erred in failing and refusing to give the instructions requested by the defendant. (P. 619).

XIII.

That the verdict is contrary to the law in the case.

XIV.

That the verdict is not supported by any evidence in the case.

BARNETT H. GOLDSTEIN,
Attorney for Defendant.

STATE OF OREGON,)
 }ss.
County of Multnomah.)

I, Barnett H. Goldstein, attorney for the above named defendant, do hereby certify that in my opinion the above Motion is well founded in law.

Barnett H. Goldstein,
Attorney for Defendant.

**In the District Court for the State of Oregon
For the County of Multnomah.**

The United States of America,
Plaintiff,

vs.

A. H. Rossi, Defendant.

AFFIDAVIT.

STATE OF OREGON,)
 }ss.
County of Multnomah.)

I, Barnett Goldstein, being first duly sworn, depose and say that I am a practicing attorney in the State of Oregon, residing and maintaining an office at Portland, Oregon; that I am the attorney for the above named defendant and was his attorney prior to and throughout his trial herein; that in preparing for trial and in the course of said trial,

my attention was called to articles appearing in newspapers being published in the City of Portland relative to this defendant and his case and I thereupon read such articles and do hereby depose that the documents hereto attached are true and correct copies of articles appearing in the Portland News, The Morning Oregonian and the Evening Telegram, said articles appearing on the times and on the dates stated.

That the article marked "Exhibit A" appeared in the Portland News a few days prior to October 26th, 1920, the date when the trial herein began; that the article marked "Exhibit B" appeared in The Morning Oregonian on October 26th, 1920, the morning of said trial; that the article marked "Exhibit C" appeared in the Evening Telegram on October 26th, 1920, the day of said trial; that the article marked "Exhibit D" appeared in the Portland News on or about October 28th, 1920, and during the course of said trial; that the article marked "Exhibit E" appeared in the Evening Telegram on or about October 28th, 1920, and during the course of said trial; that the article marked "Exhibit F" appeared in the Evening Telegram on or about October 28th, 1920, and during the course of said trial; that the article marked "Exhibit G" appeared in the Portland News on or about October 29th, 1920, and during the course of said trial; that the article marked "Exhibit H" appeared in The Morning Oregonian on or about November 9th, 1920, and during the course of said trial.

That the said aforementioned publications, to-wit The Morning Oregonian, Portland News and the Evening Telegram, are each newspapers published daily and in general circulation throughout the said City of Portland, Oregon, where the trial of this defendant was then and there being held.

Barnett H. Goldstein.

Subscribed and sworn to before me this 7th day of January, 1921.

(SEAL) Glenn E. Husted,
Notary Public for Oregon.
My commission expires Jan. 12, 1924.

EXHIBIT A.

From News Item Appearing in "Portland News."

"Implication of the United States secret service in the illegal sale of war savings stamps obtained by the robbery of a number of country banks is expected when the trial of six men charged with altering and disposing of the stamps begins in Federal Court Wednesday.

The stamps, together with some liberty bonds, were stolen from banks in Oregon and Washington last winter. The total value of the loot was in the neighborhood of \$35,000.

The bank robbers disposed of the government paper at less than one-fifth of its face value by

transferring it to 'fences,' who in turn sold it to others. One of the men who thus became involved in the alleged conspiracy is City Detective Bob La Salle.

DETECIVE ADMITS PART IN AFFAIR

Lt Salle admits selling several hundred dollars' worth of the stamps, but he says he had no knowledge of the robberies and it is expected that his attorneys will set up the claim that secret service agents told La Salle the stamps could be legally sold.

Dave Stein, a north end pawnbroker; William Brenner, a clothing merchant, and Angelo Rossi, another north end second-hand dealer, are facing trial on the charge of attempting to defraud by alteration and sale of war savings stamps. W. E. Smith, a former employe of Rossi, is also one of the alleged conspirators, as is Fred Peterson, the man who is suspected of having done the actual safe cracking."

EXHIBIT B.

From News Item Appearing in the "Oregonian."

October 26, 1920.

"The trial of six Portland men, including former detective on the city police force, for alleged trafficking in registered war savings stamps, part of the loot taken from Scio, Or., State bank when it was robbed on March 3 last, will be started in the United States district court here tomorrow. Interest in the trial has been increased by rumors that other prominent persons in Portland may be con-

nected with the operations of an alleged ring dealing in war savings stamps which are said to have been altered.

The six defendants are Bob La Salle, ex-detective on the city police force; Fred Peterson, **alleged robber, who has served three terms** in penitentiaries; Dave Stein, local pawnbroker; William Bremmer, owner of a clothing store, Angelo H. Rossi, pawnbroker and alleged to be a fence for thieves, and W. E. Smith, a watch maker, who once worked for Rossi.

STAMPS REGISTERED AT SCIO.

The tale of the robbery of the Scio bank of \$15,000 worth of registered war savings stamps as well as Liberty bonds, money and other valuables, is one of clever operatives, for the guilt of the actual crime has never been definitely placed. The bank purchased the stamps from the postoffice in Scio and took the precaution to have them registered, the Scio number being 50819, which was printed across the face of each stamp. The robbery occurred on March 3 and just a week later Fred Peterson was caught in Portland with a quantity of war savings stamps on him, some of which, according to federal operatives, clearly showed traces of alterations by the use of some acid, the odor of which was easily noticeable and yet clung to those stamps held as evidence by the United States attorney in his vaults yesterday, after more than seven months.

Peterson's activities led to Rossi, who had long been watched as a supposed receiver of stolen goods, said detectives, and later another lead

showed that Rossi was supposed to have sent a quantity of the stamps to San Francisco. The stamps were placed on the market at bargain prices, though they were worth their face value in all postoffices, and the ring saw an opportunity to make big profits, stated the complaint. Bremner bought and sold to La Salle at a profit and La Salle was said to have sold to George N. Randolph.

POOR SPECIMENS REPORTED.

It was stated that in the Randolph lot some poor specimens were found, some that were partly useable, and he asked La Salle for his money back. La Salle then came back on Bremner and Bremner on Rossi, who could not make good. This was said to have been the chain of events that set off the mine, for the partners fell out and the federal officers came in and were able to get some of them, who were angered, to talk enough to trace the operations of the gang. Rossi was said to have also sold stamps to W. E. Smith, who was said to have resold to Julius Hern.

Dave Stein was said to have made a sale to Philip Tobin, a tailor, who worked for him, and Tobin is one of the men who was reported to have had the bravado to redeem the stamps from the government after the postoffice department already had paid for them once."

EXHIBIT C.

News Item Appearing in the "Telegram."

FORMER CITY DETECTIVE ONE OF DEFENDANTS; ALLEGED ROBBER TO BE BROUGHT FROM CITY JAIL TO TESTIFY.

"Six men, one of them a former detective on the Portland police force, another now serving time in the county jail for robbery, went on trial this afternoon before Federal Judge Wolverton on the charge of attempting to defraud the government by the sale of altered war savings stamps.

The stamps involved, officials say, are believed to have been included in loot taken from the Scio, Or., State bank.

MAY INVOLVE OTHERS.

The six defendants are: Bob La Salle, ex-detective, Fred Robertson (Swede Whitey), alleged robber, who will be brought from his cell in the county jail to testify; Dave Stein, local pawnbroker; William Brenner, owner of a clothing store; Angelo H. Rossi, jeweler and pawnbroker, and W. E. Smith, a watchmaker who once worked for Rossi.

Special interest is attached to the case in view of the fact that other Portland men are said to be involved in the operations of the alleged conspirators in disposing of the stamps."

EXHIBIT D.

From News Item Appearing in the 'Portland News.'

"SECRET SERVICE HEAD MAY BE INVOLVED.

During the progress of the trial Thursday, William Glover, former head of the U. S. secret service here held frequent whispered conferences with Bar-

nett Goldstein, one of the six attorneys for the defendants.

It was charged by Assistant U. S. Attorney Veatch that Goldstein is secretly representing Glover in this trial, it being intimated by Veatch that Glover himself may be on trial at some time in the future."

EXHIBIT E.

From News Item Appearing in the "Telegram."

"William Glover, former secret service operative in charge of the Portland office, was not called as a witness by the government because he had been "running around talking to attorneys for the defense," according to his testimony as brought out by John Veatch, prosecuting attorney, in cross-examination of the government's case against six Portland men charged with conspiracy in dealing in altered war savings stamps.

Yesterday Glover testified he asked his friend, Barnett Goldstein, attorney for the defense, to put him on the stand in order that he might clear up recent newspaper notoriety before his friends.

'What friends do you refer to,' asked Judge Wolverton.

'Your honor, I have many friends up and down the coast,' he replied.

'Oh, I thought you alluded to Rossi,' said the judge."

EXHIBIT F.

From News Item Appearing in the "Telegram."

"Branded by his own admissions a traitor to his government, William Glover, recently deposed head of the local branch of the United States secret service, was submitted to a grilling cross examination in the federal court Saturday when he took the stand at his own request as a witness for the defense.

One of the startling disclosures made in the testimony of Glover was that he had been removed from the secret service after a letter had been sent by a federal grand jury to his chief at Washington.

This letter charged that Glover and an assistant planned with Angelo Rossi, a "stool pigeon" impressed into their scheme, to "plant" stolen war stamps in the room of Fred Peterson, ex-convict.

Peterson, on account of his previous record, being convinced he would be convicted before a jury, it is said, pleaded guilty to the possession of the stamps. Peterson is now serving a sentence in the county jail as the result."

EXHIBIT G.

From News Item Appearing in the 'Portland News.'

"New developments growing out of the war savings stamp scandal in the federal court trial now in progress today here were:

That \$5000 worth of stamps disappeared after they had passed thru the hands of three detectives who made an arrest of a petty criminal in whose possession was found stamps to the value of something like \$20,000, part of the loot from the bank of Asotin, Wash., robbed by yeggs.

That an attempt was made to bribe City Detective Tom Coleman.

That the total amount involved in the robbery of six or seven small country banks in the northwest within a space of a few months was close to \$200,000.

That the recent robbery of the Scottsburg post-office and general store was the work of a yegg gang headed by Frank Wagner, notorious safe cracker, is the opinion of Pinkerton operatives who have been working on the case.

Wagner, who was serving a 40 year sentence at Salem for the blowing of a safe at Astoria, made his escape a few weeks ago.

FENCES WERE TO SELL PLUNDER.

The theory that Wagner planned and carried through the coup of Scottsburg where \$20,000 in cash was the principal loot, was formulated when the Pinkerton man learned that Ann Bryant, 'affinity' of Wagner, has been making her home within six miles of Scottsburg during the past few months.

All of this plunder is supposed to have been brought by the bank robber gang to Portland to be disposed of thru Portland 'fence.'

Angelo Rossi, one of the six defendants in the war savings stamp controversy case now being prosecuted in the federal court, is suspected of having been the principal distributing agent and W. E. Smith, William Brenner, David Stein and Detective Bob La Salle, co-defendants with Rossi, are presumed to have been sub agents. Besides these, the United States department of justice believes that many other Portland men are involved.

‘The worst gang of yeggs that has ever operated on the Pacific coast,’ said Special Agent William Bryon of the U. S. department of justice, ‘are mixed up in this conspiracy.’

FIND BRIBE ON HIS FRONT PORCH.

That it would have been impossible for bank robbers to put \$20,000 worth of government securities on the market without the co-operation of government sleuths and of some local law enforcement agencies is the opinion of Bryon.”

EXHIBIT H.

From News Item Appearing in the “Oregonian.”

“The fate of Robert LaSalle, former inspector of the Portland police department; Angelo Rossi, Dave Stein and William Brenner, local merchants; W. E. Smith, watchmaker, and Fred Peterson, ex-convict, who is now doing a term of one year in the Multnomah county jail, all of whom are charged with conspiracy in trafficking in altered United States savings stamps, rested with a jury in the federal district court last night.

According to the federal operatives and the United States attorney's office, this case is intended to open a thorough clean-up of activities of an alleged ring dealing in stolen government securities in this section of the country, often making honest men their dupes in the disposal of the paper. In the federal officials' estimation, it is this clique that has made it possible for robbers to break into many banks in this state in the last few years, always finding ready sale for the product of their robberies, and few of the government stamps and liberty bonds have been traced. The amount lost by these robberies runs into many thousands of dollars, and the government is determined to run down the criminals."

And afterwards, to-wit, on the 10th day of January, 1921, there was duly filed in said Court, a Motion in Arrest of Judgment in words and figures as follows, to-wit:

MOTION IN ARREST OF JUDGMENT.

**In the District Court of the United States for the
District of Oregon.**

The United States of America,
Plaintiff,

vs.

A. H. Rossi,
Defendant.

Now, after verdict against the said defendant and before sentence, comes the herein named de-

fendant in his own person and by Barnett H. Goldstein, his attorney, and moves the Court to arrest judgment herein and not to pronounce same, for the following reasons:

1. That the said indictment is duplicitous in that two offenses are charged or attempted to be charged therein;

2. That the said indictment does not state facts sufficient to constitute an offense or a crime against the laws of the United States;

3. That no issue has been joined herein in that the defendant has never pleaded to this indictment; and that because of which said errors in the record herein, no lawful judgment can be rendered by the Court upon the record in this case.

A. H. Rossi,
Defendant.

Barnett H. Goldstein,
Attorney for Defendant.

STATE OF OREGON,)
 }ss.
County of Multnomah.)

I, Barnett H. Goldstein, attorney for the above named defendant, do hereby certify that in my opinion the within Motion is well founded in law.

Barnett H. Goldstein,
Attorney for Defendant.

And afterwards, to-wit: on Monday, the 17th day of January, 1921, the same being the 65th judicial day of the regular November term of said Court; present the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

The United States of America,

vs.

Fred Peterson, Angelo A. Rossi et al.

Now at this day this cause comes on to be heard upon motion of the defendant Angelo H. Rossi for a new trial, and in arrest of judgment, plaintiff appearing by Mr. John C. Veatch, Assistant United States Attorney and the defendant Angelo H. Rossi by Mr. Barnett H. Goldstein, of counsel, and the court having heard the arguments of counsel

IT IS ORDERED that said motions be and they are each hereby denied, and that said defendant be and he is hereby allowed an exception to the said order of the court.

And afterwards, to-wit: on Wednesday, the 26th day of January, 1921, the same being the 73rd judicial day of the regular November term of said Court; present the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

The United States of America,

vs.

Fred Peterson, Angelo H. Rossi et al.

Now at this day come the plaintiff by Mr. John C. Veatch, Assistant United States Attorney, and the defendant Angelo H. Rossi in his own proper person and by Mr. Barnett H. Goldstein, of counsel. Whereupon this being the day set for the sentence of Angelo H. Rossi upon the verdict heretofore returned herein

IT IS ADJUDGED that said defendant Angelo H. Rossi be imprisoned in the United States Penitentiary at McNeil Island, Washington, for the term of eighteen months and that he stand committed until this sentence be performed or until he be discharged according to law. Whereupon upon motion of said defendant Angelo H. Rossi

IT IS ORDERED that execution herein be and the same is hereby stayed for sixty days from this date, and it is FURTHER ORDERED that the bond of said defendant stand until his appeal herein is perfected.

And afterwards, to-wit: on the 1st day of June, 1921, there was duly filed in said Court, a
in words and figures, to-wit:

BILL OF EXCEPTIONS

**In the District Court of the United States for the
District of Oregon.**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANGELO H. ROSSI,

Defendant.

BE IT REMEMBERED, That upon the arraignment of the defendant in this case on the 20th day of July, 1920, the said defendant, Angelo H. Rossi, by his counsel, demurred to the indictment herein, which said demurrer being overruled, the cause thereafter, and on the 26th day of October, 1920, came on for trial without any plea to the said indictment having been made or entered by the defendant herein.

BE IT FURTHER REMEMBERED, That the above entitled cause came on for trial in the above entitled court on the 26th day of October, 1920, before Hon. Charles E. Wolverton, judge, and a jury duly empaneled to try the cause, the government appearing by John C. Veatch, assistant United States attorney for the district of Oregon, and the defendant appearing in person and by Barnett H. Goldstein, his counsel.

Whereupon the following proceedings were thereupon had:

MISS DAISY BUCKNER was called as a witness on behalf of the government, and, being first duly sworn, testified as follows:

That she lives at Scio, Oregon, and is postmistress there; that there were filed at the Scio post-office claims for the loss of registered stamps on the night of March 3, 1920.

Thereupon the witness was asked the following questions:

Q. Miss Buckner, state whether or not any claims for the loss of registered stamps on the night of March 3, 1920, were filed at the post-office at Scio, Oregon.

A. There have been.

Q. Will you just explain briefly to the jury, Miss Buckner, what these registered stamps are, and how they are registered, so that they may understand it.

Thereupon the defendant interposed the following objection to the question last set forth, and the following proceedings were thereupon had:

MR. GOLDSTEIN: Just a moment. If the court please, it seems to me that the best rule probably would be with respect to introducing any regulation as to the method of registering the stamps at this time,—I particularly call your Honor's attention to the fact that it is not alleged anywhere in the conspiracy indictment that any of the defendants ever had anything

to do with registered stamps. It does not allege that any of these stamps had been registered, if such be the fact.

MR. VEATCH: I would like to call the court's attention that the indictment not only charged conspiracy to defraud the Government. It would be immaterial whether or not there was such an allegation in the indictment, if it developed at the trial of this case that the scheme that was entered into by the parties here was a scheme to defraud the Government and was a scheme that would be calculated to defraud the Government. They are charged with removing a certain registration and identification number from the face of these stamps in the carrying out of that scheme. It is perfectly proper at this time to show the particular stamps that were found in the defendant's possession had a certain registration number on them, for the purpose of identification, to show where these stamps came from.

COURT: I don't think it is necessary under the allegations of the indictment to allege that the stamps were registered. It is sufficient that there was a scheme to defraud—a scheme to get hold of these registered stamps and to dispose of them in fraud of the Government. I think the indictment is sufficient to allow that. The objection will be overruled.

Exception allowed.



Thereupon the witness continued her testimony as follows: That the regulations governing the registration of war savings stamps are that stamps may be registered at any first, second or third-class postoffice, regardless of when or where they were purchased or by whom, except that stamps to be registered must have been pasted upon certificates; that the stamps are each canceled separately by means of a rubber stamp bearing the postoffice number and the serial number on each stamp; that when a stamp is registered, the postoffice number is written across the face of it with ink or stamped; that the postoffice number is placed above the serial number, which begins with No. 1 and is numbered consecutively; that the postoffice number of the Scio postoffice is 50819. The witness then identified a reproduction made by herself of a registered stamp as registered in the Scio postoffice, which was offered and received in evidence and marked "Government's Exhibit 1," the top number thereon being the postoffice number, and the second number being the serial number; that every stamp registered at the Scio postoffice bears the same postoffice number, to-wit, 50819, but the serial number varies, depending upon the time when the stamps are registered. The witness further testified that the stamp used in making the impression on Government's Exhibit 1 is the stamp used by her in registering the stamps at the Scio postoffice; that the ink used on this exhibit was used on part of them, but not all, some being black, while the ink used on the exhibit was red, depending upon the

condition of her pad at the time the stamps were registered; that when the stamp is registered it is returned to the owner, and the postoffice keeps a record of the registered stamp; that the Government will not insure the holder of stamps indemnity in case they are lost, stolen or burned except when they are registered; that in case they are registered the Government will issue new stamps or pay for them. The witness further testified that perhaps 20 or 30 people in the vicinity of Scio made claim at the Scio postoffice after March 3, 1920, for replacement of stamps that were lost; that the names of the parties making claims for stamps were as follows:

Edward D. Jones, Minnie D. Jones, Albert E. Randall, Mrs. Rosella White, William A. White, Mrs. Elizabeth J. Ewing, George M. Bilyeu, Clarence Roy Scott, Marjorie Moses, Grace Bilyeu, Anton Holub, Daisy Buckner, Vaclav Proop, Waunita Stepanek, Viola Stepanek, Mrs. Ollie MacDonald, Fred Jones, Robert G. Daniel, Frankie Holub, Mrs. Melvina Randall, W. R. Kelly, W. J. Kelly, Effie Rodgers, James Keith White, Ephriam Piatt, Ruth Eichinger, Mary Holub, Melda Bilyeu, Guy Funk, J. T. Funk, Mrs. S. O. Funk, Mrs. Nancy D. Arnold, Wilbur Funk, F. J. Denny, Chas. A. White, William Phillips, Elva Phillips, C. E. Sargent, Joe Holub, Frank Shindler, J. A. or Minnie D. Craft, Mrs. Lulu Quinn, C. H. Rockwell, Eleanor Shimanek, Mrs. Emma Holub, Mrs. Mary E. Richardson, Verlin Richardson, Thomas A. Richardson, Thomas P.

Prospal, Mrs. Cora Eichinger, Antonie Prokop, John W. Scott, Glen A. Scott, C. A. Silbernagel, Rosa Silbernagel, John Soucek, Fred Mespelt, Frances Higinbotham, Eldon Vaughan, Mrs. Emma Cain, and Napoleon B. Moses.

The witness further testified that the claim for replacement of these stamps was based on the loss through the Scio Bank; that she was prepared to set opposite the names read the number of the certificates and the number of the stamps on each certificate, together with the serial number on the certificate.

Upon cross-examination witness testified that under the rules and regulations of the department she did not register loose, separate stamps; that the only time registration was made was when a stamp was attached to the certificate and the name of the owner appeared on the certificate; that stamps unless registered are not subject to the protection of the Government in the event that they are lost, stolen or burned; that loose stamps separate and apart from certificates were not registered either with the postoffice number or the serial number; that the Government assumed no responsibility for loose stamps that are not part of a certificate; also that the Government assumes no responsibility even if the stamps had been attached to certificates unless they had been properly registered with the postoffice.

Upon redirect examination witness testified that stamps registered at the Scio postoffice could not

be redeemed at any other postoffice except by means of a special form prepared by the Government, which would have to be sent by the postoffice, at which the redemption is sought, to the Scio postoffice; that the record would have to go through the Scio postoffice before it would be paid.

Upon recross-examination witness testified that it would take about five minutes, if a postoffice had the money, to redeem a registered stamp certificate; that the postoffice department, however, reserved ten days within which to redeem registered stamps, but that such time is not absolutely required if the postoffice has the money.

Upon redirect examination witness testified that the ten-day period for redemption is simply to allow the local office to get the funds on hand to pay for the stamps; that the Government does not require it redeemed in less than ten days, but could redeem it immediately if it had the money.

Later during the course of the trial the witness was recalled and testified that she had prepared a list of the registered war savings stamps for which claims had been filed at the Scio postoffice, giving the serial number of the certificates, the serial number of each stamp, the names of the owners on the certificates, and the number of stamps on each certificate; that the total number of said stamps was 3137.

Whereupon the following proceedings were had upon the offer made by Mr. Veatch, assistant United States attorney, to introduce the list in evidence:

MR. VEATCH: I offer that in evidence at this time.

MR. GOLDSTEIN: If the court please, at this time on behalf of the defendants Messrs. Rossi, Brenner and Smith I interpose this objection: There has as yet been no proof of any conspiracy between these defendants, or that any conspiracy had been entered into that these defendants at any subsequent time engaged in. I further object upon the ground and for the reason that there has as yet been no connection submitted of any of the stamps that had been registered with the postoffice authorities as having at any subsequent time come into the possession of any of the defendants or either of them, by any serial number or otherwise. I also object for the further reason that there is nothing in the indictment that alleges any of these stamps that these defendants are said to have conspired to have altered had in the first place been registered stamps, or had been registered with the postoffice department. And if any evidence of that character is introduced, it can only be introduced for one purpose and one purpose only, and that is, for the purpose of proving an intent after a conspiracy had already been established and proven; and then only after a jury had been cautioned and warned that that intent is only to be considered after they are convinced beyond a reasonable doubt that a conspiracy had been entered into, and that is no evidence of the commission of the identical and specific offense for which the defendants are charged. I further contend that it is unfair to submit any record of the loss of stamps that had been registered by the postoffice department,

unless there is some connection showing that any of these particular stamps had come into the possession of any of these defendants, either directly or indirectly, and there has been no such proof. And I make this objection particularly with respect to the defendants that I represent.

Objection overruled. Exception allowed.

Upon cross-examination witness testified that the list being "Government Exhibit 5," indicated that a number of people came to the postoffice, of which she was the postmistress; that a certificate upon which was impressed a number of war savings stamps, and each certificate was fully and completely made up, bearing the certificate number on the top of the certificate, the name of the owner on the certificate, and each certificate had at most 20 stamps, and in some instances less than 20 stamps; that she registered these certificates at the request of the owners, or those who presented stamps to her; that she registered no stamps unless the stamps were a part of the certificate, bearing the certificate number and containing the name of the owner upon the certificate; that she could not say of her own knowledge where any of the certificates with these stamps that she registered were at that time; that she could say of her own knowledge that some of these certificates with stamps bearing the registration number of her postoffice had been stolen; that she could do so with respect to 13 of her own certificates out of 170 that had been intrusted to the bank; that she was at the bank the morning after the robbery occurred and saw the

condition; that she was not able to tell who secured these stamps or certificates; that she did not know whether the defendant Rossi ever got any of the stamps or these certificates; that she did not know whether any of these defendants removed any of the stamps from the certificates that had been registered; that she did not know whether any of these defendants altered the stamps by erasing the registration number so placed upon the stamps; that there was no regulation preventing any one from buying through the postoffice single, separate, individual stamps, and it is only when one wants to get value therefor from the postoffice that it is necessary to secure a certificate either from some postoffice or some bank, which certificate is given gratuitously, and then when it is desired to cash the stamps, they are placed upon the certificate, and upon submission to the postoffice the holder gets whatever it is then worth.

Thereupon W. R. BRYON was called as a witness on behalf of the Government, and, being first duly sworn, testified as follows:

That he was an agent of the Department of Justice, and was such during the month of March and to the month of May, 1920; that about May 10, 1920, he had an interview with the defendant, Angelo Rossi, at his office in the postoffice building, at which there was present besides himself Miss Doeltz, the stenographer, and John Price; that Rossi was being interviewed with a view of ascer-

taining information about war savings stamps; that he was not under arrest at that time.

Whereupon the witness was asked the following question:

Q. State, Mr. Bryon, as near as you can recollect, what was said by Mr. Rossi at the time.

Whereupon the following proceedings were thereupon had:

MR. GOLDSTEIN: If the court please, it is the contention of the defendant, Mr. Rossi, that any statement he made was an involuntary statement, a statement induced from him by reason of certain promises and representations made to him by a responsible representative and officer of the Government. It is contended that Mr. Rossi had prior thereto made a statement to Mr. Glover, who was the agent in charge of the secret service department of the United States.

MR. VEATCH: Are you testifying before the jury?

MR. GOLDSTEIN: No, I am not testifying, but that is our contention. I would like to ask certain qualifying questions of Mr. Bryon before he states anything Mr. Rossi said.

COURT: Very well.

Examination by Mr. Goldstein.

Q. Mr. Bryon, you knew that prior thereto Mr. Glover, who was the agent in charge of the secret

service department charged with the responsibility of protecting Government obligations, had made an exhaustive investigation concerning these identical war savings stamps. You knew that, did you not?

A. I did not.

Q. You say that you didn't know that Mr. Glover had been investigating or had been on this case before you got in on it?

A. What is that?

Q. Do you mean to say that you didn't know that Mr. Glover had been investigating this case and had been attached to the case before you were called in on it?

A. I do. I mean to say that absolutely, that I didn't; that I didn't know that he had anything to do with it.

Q. Then I understand you, Mr. Bryon that on May 10, 1920, when you were investigating and interviewing Mr. Rossi you never knew that Mr. Glover had anything to do with that case before that time?

MR. VEATCH: He stated he did.

MR. GOLDSTEIN: You did know he had. I thought you said you didn't.

A. You want to know whether I knew that Glover was investigating war saving stamps or not?

Q. Was investigating that case before you were called in on it.

A. I didn't know anything about Glover having anything to do with war savings stamps.

Q. What did you think he had to do with?

A. I could only assume he had something to do with some bonds, but I never talked to Glover about them.

Q. Didn't you know Glover had been talking to Rossi before you talked to Rossi?

A. No.

Q. Didn't you know that Glover—Glover and his assistant, Mr. Walters, had caused the arrest of Mr. Peterson?

A. I knew that just by the press, yes.

Q. By the press?

A. Yes.

Q. Considerable press notoriety about it?

A. Yes, sir.

Q. And at the time—how did you happen to be called in on that case?

A. Well, now, just what do you mean—where and when?

Q. How did you happen to hold this interview with Mr. Rossi on May 10th? At whose request?

MR. VEATCH: Tell the whole story, Mr. Bryon, since he has asked for it.

MR. GOLDSTEIN: Just a minute. Mr. Veatch has interrupted. I asked you a very simple question, at whose request. Name the gentleman at whose request you were called in to make this investigation.

A. Well, let me explain to you so you will understand me. I am trying hard to understand you, but I can't do it. Now you try to understand me.

Q. Just a moment, Mr. Bryon. I fully appreciate your wanting to testify, but I want to know at whose request. Was it at your own request, or was it at Mr. Veatch's request, or was it at the request of the department for whom you are working?

A. That I did what?

Q. That you interviewed Mr. Rossi. How did you happen to have him in your office? At whose request?

A. Nobody's.

Q. Did he come of his own volition?

A. No, sir.

Q. Who brought him in there?

A. Two of my agents.

Q. At whose request did they bring him in?

A. At my direction.

Q. And why did you direct them to bring in Mr. Rossi? Who authorized you to do it?

A. Because I wanted to talk to him.

Q. Why did you want to talk with him?

A. I wanted to ask Mr. Rossi what a certain telegram meant which he sent to a man who gave the name of Lee, in which he said the goods are all rusty.

Q. Who gave you that telegram?

A. Charlie Welter. No, he never gave me the telegram. Charlie Welter gave me the information.

Q. Well, did you see the telegram?

A. I never did.

Q. Then Mr. Welter, of the postoffice department, was the man who asked you to investigate and get this information from Mr. Rossi? Is that correct?

A. No, sir.

Q. Did you do this of your own initiative or without consulting with Mr. Veatch?

A. Well, you mean to talk to Rossi?

Q. Yes.

A. Talked to Rossi of my own initiative.

Q. Did you know then that he was the subject of investigation because of his possession of some war savings stamps?

A. No, sir.

Q. That was news to you, was it?

A. Yes, sir.

Q. And when you called him in, how did Mr. Veatch happen to be there?

A. He walked in the door.

Q. Oh, by accident?

A. Yes, sir. Well, I could not say by accident. He may have had something in his mind. I don't know about that.

Q. Do you mean to say that you didn't notify Mr. Veatch that Mr. Rossi was there?

A. I don't recall that I did.

Q. Did he know that you were going to have—

MR. VEATCH: If the court please, that is the Government's witness, called by the Government. It seems as though the defense is attempting to conduct all the examination here. I think if you will let Mr. Bryon tell the story as to how he happened to call in Mr. Rossi, what was the occasion for calling in Mr. Rossi, it would only take a very few minutes to bring it all out; and then he can cross-examine to his heart's content.

MR. GOLDSTEIN: Mr. Veatch, the purpose of my questioning is very apparent. He has already volunteered certain information with respect to why he called Mr. Rossi.

Q. I want to know whether this meeting of yourself and Mr. Veatch was arranged for in advance.

A. What meeting are you talking about now? I have a right to know what you are trying to get at, and I will answer you. I don't want to quarrel with you. Now, what meeting are you talking about?

Q. May 10th. That is what Mr. Veatch was asking you about.

A. Mr. Veatch didn't say May 10th. Mr. Veatch said on or about May 10th, and I answered his question.

Q. You stated that on or about May 10th you, Mr. Doeltz, Mr. Veatch and Mr. John Price were gathered in your room, and Mr. Rossi made certain statements to you with respect to certain war savings stamps.

A. I did, yes.

Now, I want to know whether that conference or meeting had been prearranged.

A. No, sir.

Q. It was just purely accident?

A. There was no pure accident about it. There is nobody can tell at what stage an investigation is going to require the presence of a number of people. You well understand that.

Q. Was there any part of the stage of that investigation that would impel you to send for Mr. Veatch to be present?

A. There was, yes.

Q. Then I get from you that you did call for Mr. Veatch.

A. I don't recall the instant, but there was an occasion where I could have sent for him and would have sent for him, and where his presence was required.

Q. If it was necessary you sent for Mr. Veatch and he came?

A. I am not saying I did send for him, for my memory don't serve me that I did.

Q. He was there?

A. Yes, sir.

Q. Did you notify him he was liable to be arrested for any connection with war savings stamps?

A. Mr. Rossi?

Q. Yes.

A. I don't think I told him he was liable to be arrested.

Q. Did you notify him at any time of the proceedings that you would arrest him if he didn't divulge certain information you wanted?

A. I did not.

Q. Did you at any time notify him of his rights as a prospective defendant?

A. I did thoroughly.

Q. At the beginning?

A. Yes, sir.

Q. You told him that he didn't have to make any statement unless he desired to do it voluntarily?

A. I did, yes, sir.

Q. You also told him that anything that he might say might be used against him in the event he might be indicted?

A. I did, yes, sir.

Q. You stated that in the presence of whom?

A. In the presence of Rossi.

Q. Who else?

A. John Veatch.

Q. Who else?

A. John Price.

Q. Did Mr. Veatch give this information or did you?

A. He enlarged upon it.

Q. He enlarged upon it?

A. Yes, sir.

Q. Did Mr. Veatch give you to understand that he had already had conversation with Mr. Rossi prior to that time?

COURT: It is apparent Mr. Rossi had been advised of his rights. I don't think you better take up the time of the court with further examination.

MR. GOLDSTEIN: Just one or two questions.

Q. This statement Mr. Rossi gave was given to you with knowledge of those rights that you communicated to him?

A. Yes, sir.

Q. In the presence of Mr. Veatch and Mr. Price and Miss Doeltz?

A. Yes, sir.

Q. Was it transcribed?

A. Yes, sir.

Q. Have you got the original transcript?

A. I have not.

Q. Beg pardon?

A. Not in my pocket, no.

Q. There was written testimony taken down?

A. There was.

Q. Did he sign his name to it?

A. He did not, that I know of.

MR. GOLDSTEIN: I therefore suggest that the written transcript would be the best evidence.

COURT: I don't think so.

MR. GOLDSTEIN: Take an exception.

The witness over the objection and exception of the defendant was thereupon permitted to continue his testimony. He stated that as agent of the Department of Justice it was part of his work to investigate altered or forged obligations and securities of the United States; that this particular case was not handled by him in the beginning; that he came into it at the request of Mr. Veatch, assistant United States attorney.

Whereupon the following questions were asked and the following answers given:

Q. What was first said when he was first brought into the office?

A. I called him in there and asked him about this Earl Lee, what business he had with Earl Lee, and what he knew about him.

A. About May 4th or 5th you came in my office to talk to me about this man Lee. Is that what you want?

Q. Yes.

A. Is that where you want me to start?

Q. Let's get down to this. Did you say that I was called in or Miss Doeltz called in, after Rossi was called in? I want to get the substance of the conversation. You say Miss Doeltz took down what was said in there. I want to get whether or not there was anything said by Mr. Rossi before Miss Doeltz came in to take down the statement.

A. Yes, there probably was a few words; a little. I don't know that it was of anything important. There might have been something said. He came first.

Q. What was said at that time.

A. By Rossi?

Q. Yes.

A. Rossi told me that he knew something about this, and that if I had any idea that he was going to give any testimony about it I might as well forget it, and throwed his fist down on the desk and made everything jump in the air. And if you want to know what I said I will repeat it.

MR. GOLDSTEIN: Go ahead. Tell what you said.

A. I told him that he was not conducting any investigation or running any part of the Government business, and that if he wanted to make any such statement as that to go downstairs and tell it to the court on the second floor; that he had a way of dealing with him; that he nor nobody around there would direct who would testify or who would not testify, or when they would testify, and that he would not be consulted concerning the operation or the direction of any Government investigation, nor be asked any suggestions. All he had to do was to answer a few simple questions.

Q. Did Mr. Rossi say anything to you, Mr. Bryon, about any other department of the Government being concerned in this case?

A. He said that he had given some information.

Q. Did he say to whom he had given some information?

A. He said he had given it to a man by the name of Glover.

Q. Any one else?

A. Well, I don't remember whether he said any one else at that time. I think that came out later that he had given information to some one else. But I don't think that came out right at that time. I know it didn't.

Q. State whether or not there was anything said about that time about any promises to Mr. Rossi.

A. What he said?

Q. Yes.

A. He said that he had been promised protection and immunity.

Q. He said that he had been promised protection and immunity?

A. Yes, sir.

Q. Did he say by whom such a promise was made?

A. By Mr. Glover.

Q. That is Mr. William Glover?

A. That is who I assumed he meant.

Q. Well, that was about the substance of the conversation, was it, before Miss Doeltz was called in?

A. Yes, sir; about that time you came to the door yourself.

Upon cross-examination witness was asked if he did not state that on May 3, 1920, seven days before he had his first interview with Rossi, he was called in the case by Mr. Veatch, the witness stated that he was not sure as to the time when Mr. Veatch first talked anything to him pertaining to this case; that he did not at that time tell him it did pertain to this case; that it subsequently developed that it did; that he was not asked to take charge of the case nor was he asked to investigate the disposition

of war savings stamps or liberty bonds; that he was not supposed to investigate at all; that he was counselling with Mr. Veatch as to how a certain matter could be investigated; whether a man giving the name of Earl Lee was telling the truth; that at that time nothing was said to him about Mr. Glover investigating the war savings stamps' case; that nothing was said about Rossi or about any of the other defendants in the case; that on May 13, 1920, he sent some of his operatives to bring Rossi to his office, which was the first time he talked with Rossi.

The witness was thereupon asked the following questions, and the following answers were given:

Q. I further understand you to say that it is a part of your duty to enforce the law with respect to war savings stamps. Is that correct?

A. Well, I don't know exactly how to answer that. I never said anything about that. What do you mean? In what connection?

Q. I think you stated—Mr. Veatch asked you if part of your duties was to enforce—

A. He said something about securities.

Q. Yes, war savings securities or rather securities of the Government.

A. Part of my duties covered that. It is pretty hard to draw the line on it.

That at this first conversation the witness had with Mr. Rossi, and before Miss Doeltz or any one else came into the room, Rossi told him at the outset that he had given certain information to Mr. Glover, and because of that information Mr. Glover had promised him immunity; that witness knew as a matter of fact that Mr. Glover was the agent in charge of the United States secret service; that after he made that statement witness told Rossi that he wanted him to explain certain transactions in which he was alleged to be involved, and that upon his refusal to tell him witness told Rossi that he could go down to the second floor and tell it to the judge; that Rossi, however, did make a statement thereafter which Miss Doeltz transcribed, and that witness was present most of the time that the statement was being made; that Rossi made a statement that he knew something about these stamps, which statement was made after he had told witness about Mr. Glover's promising him immunity; that Rossi in this statement told him that he had some of these stamps and that he sold some of them, and told in part to whom he sold them.

Thereupon the following questions were propounded to the witness, and the following answers given by him:

Q. Well, then, he did furnish you a statement?

A. Eventually he gave some information, yes.

And that information was given in the presence of Miss Doeltz and Mr. Veatch?

A. Yes, sir.

Q. What did you say to him in response to his information to you that he had been promised immunity by Mr. Glover?

A. I told him that he would not direct any information or any inquiries the Government was making; none of his advice was wanted. All that I wanted to know was what he knew about this telegram.

Q. Did you speak rather harshly about Mr. Glover?

A. I made no reference to Mr. Glover at all, and passed off the statement that Mr. Glover was the man he was doing business with, as though it made no impression on me. I didn't want to make any reference to Glover.

Q. It made no impression?

A. I say I passed it off in a way it made no impression.

Q. Did you expect to call up Mr. Glover to check up Mr. Rossi's statement?

A. I didn't.

Q. That is in effect all the transaction you had with Mr. Rossi?

A. I will say yes.

Thereupon MISS HARRIET DOELTZ was called as a witness on behalf of the Government

and, after first being duly sworn, testified as follows: That she was a stenographer in the office of Mr. W. R. Bryon, of the Bureau of Investigation; that she was present at an interview with Mr. Rossi some time in the month of May, which it was later stipulated was May 13, 1920, and took notes of the conversation that took place at that time and transcribed the same. The witness thereupon read her notes to the jury, which were as follows:

MR. VEATCH: You understand this, Rossi, that you are not required to tell me anything, but whatever you do say here can be used against you. You are in no position to tell us what you will do or what you will not do. There has been certain Government property that has been stolen. It is our business to find out the men who are guilty, and it is our business to find out who all is mixed up with it. You have been called in here and given an opportunity to explain what you know about it because we know you have had correspondence with certain of these men who we know stole certain Government property—now if you are one of that bunch we want to know it.

A. I am not.

Q. If you are not one of the bunch, now is the time to clear it up, but remember this, that when it comes to the time of trial and it is necessary for us to use you, you certainly will be called as a witness. Now, we are not promising you anything. You are in no position to demand anything.

A. Well, as far as that correspondence is concerned, there is nothing in that correspondence that can get me in wrong with the Government. I know that.

Q. Well, what about going down to the U. S. Bank and getting these blank certificates for war savings stamps.

A. Yes I did go down.

Q. And put war savings stamps on them.

A. Yes.

Q. Where did you get those stamps?

A. Got them from a fellow named Whitey.

Q. Swede Whitey?

A. Yes.

Q. The fellow now under arrest?

A. Yes.

Q. When did you get them from Whitey?

A. Well, I couldn't tell you the date exactly—it was a few days previous to the time I went down—

Q. How long have you known Whitey?

A. Two years.

Q. Well, you know Whitey is a Yegg?

A. I got acquainted with him when he got paroled out of Salem; when he was working in the shipyards.

Q. Didn't you know these stamps were stolen?

A. No, I never asked those fellows any questions. There were enough stamps for seven books and maybe twenty or twenty-five over.

Q. Well, you had reason to suspect those stamps were stolen.

A. Well, it's just like this—you have to consider the source. I knew when I had that store—Swede Whitey bought stamps when he worked in the shipyards because it was compulsory; but that happened a couple years ago.

Q. Did you pay him anything for those stamps?

A. No, sir. He wanted me to dispose of them.

Q. He wanted you to sell them?

A. Yes, sir.

Q. Do you run a pawnshop?

A. No, sir.

Q. How did he happen to be selling stuff to those people?

A. Well, I don't know. That particular time he came into the store and bought a ring off from

me. He asked if I could dispose of stamps for him. I told him I didn't know—every jeweler, in fact 90 per cent of the men on the street will buy them and take them in on sales, and like that.

Q. Well, did you try to sell any of them?

A. Yes.

Q. Where?

A. I asked two or three people.

Q. Whom did you ask?

A. Well, I asked a fellow by the name of Dave Stein, but he said he would buy them if they were on books and he got a bill of sale. Well, just about that time the secret service men came into the store and I didn't have time to do anything with them.

Q. Did you try to sell to anyone besides Stein?

A. Yes, I did. Two or three different pawnshops, but they wanted them for nothing, you know.

Q. What did you do with them then?

A. Well, I had them in the store and Joe Walters, of the secret service, came into the store and said: "Rossi, have you any war savings stamps?" I said I did. He said: "How many?" I said I had seven books of them. He said: "Where are they at?" And I handed them to him. He asked me if I had anymore, and I gave him the rest. He asked me where I got them, and I told him, and he went up and got Swede Whitey and they ar-

rested him, so I didn't have the stamps in my possession more than about, I should judge, a day and a half. It might have been two days.

Q. Rossi, do you know you are violating a law when you have this in your possession?

A. I didn't know it then but I know it now—Glover read the law to me. When they came into the store and I saw they were on the case I didn't hesitate. I said: "If they are crooked I don't want them," and I gave them the stamps in two minutes. In fact, I was making no secret about disposing of them. I asked several people: "Do you need war stamps—at a slight discount?" Whitey was asking \$3.75 each for them.

Q. Has John Bull a solution that will remove registry numbers?

A. When I got these stamps I noticed a peculiar odor, but I couldn't see any number on them.

Q. What did you mean, Rossi, when you said here that you wouldn't take the stand in this case?

A. Because they suspicioned that I was responsible for Swede Whitey and all the rest of them getting pinched and my 'phone rang so much—I have been compelled to carry a gun for the last three or four weeks because if I saw one of these fellows and they didn't look right to me I would see that I started shooting first. I know them people better than any one in Portland—I know what they are capable of doing.

Q. Have you gotten other stuff from these fellows?

A. No, absolutely not, never.

Q. Did you ever go as a fence for them.

A. No, sir. They never used to come near me because I never really had enough money. They do business with people who have plenty of money. The only thing, I knew Johnny Bull years ago; in fact, he is the only one I knew of that gang, although the local policemen think I acted as a fence for those boys. They never gave me 10c worth of stuff, never. I don't know whether your office is connected with Glover's office. Glover can tell you that it was through me they got all they did get and I helped them; gave my time to it; neglected my business and everything else to help Glover on that case, with the understanding, positively, that I would not get mixed up in court with it. I thought I did enough. I personally accomplished for them what has been accomplished.

Q. Were you the informant then that Walters refused to tell his name at the hearing up here?

A. Well, I don't know. I suppose so, unless he was referring to somebody else.

Q. At the time of the commissioner's hearing—

A. I don't want to be classified as an informant or anything else. It was simply when they came, I told them the truth, that's all.

Q. That's all you can do anywhere.

A. Yes, a man is foolish if he doesn't.

Q. At the time of the commissioner's hearing, Mr. Walters was asked if he had ever seen these stamps before, and he said he had but refused to tell where he saw them, because it would be to his informant—that an officer is not required to tell where he got the information. You understand this man Lee was arrested in Idaho?

A. Yes.

Q. And certain correspondence passed between you and Lee?

A. Yes.

Q. You understand that we know Earl Lee, Johnny Bull and Swede Whitey robbed the Scio bank?

A. Well, that's what I heard. I never believed Lee had anything to do with Johnny Bull. He said he did in letters he wrote, because at that time Earl Lee was in trouble with an automobile, and I was giving him money to live on, and I couldn't figure how he got in on that job—of course, he may have been 'pulling' me.

Q. Earl Lee was in trouble with an automobile?

A. Well, he bought a machine and forgot to pay for it, that was all.

Q. What kind of a machine did he get?

A. Hudson Super-Six.

Q. Well, Rossi, I don't know anything about your connection with them except what you told me.

That is the only connection I had. In fact, I never saw any of the fellows previous to a year ago.

Q. Who is "Nellie?"

A. I heard she is pretty—well smart woman. She seems to handle the bank roll.

Q. She lives with Tom Shay?

A. I always thought she lived with Gleason.

Q. Well, Tom goes by the name of Malone?

A. I'm not personally acquainted with him, only what I heard of him. He is a kind of a safe cracker.

Q. You don't know whether Nellie is living with Gleason or Shay?

A. I always thought she lived with Gleason, from what I heard.

Q. What do you know about Nellie?

A. I don't know her personally. I wouldn't know her if I saw her. Just heard the fellows talk about her. Johnny Bull seems to think a lot of her. My own personal opinion is that that woman used to do the locating for that gang.

Q. Well, Rossi, the Government has started out to clean out this whole bunch.

A. Well, it's a good job. I'm surprised they didn't do it years ago.

Q. We are not asking you to be an informant on anybody, but we have run onto your trail in investigating this case. All we ask of you is simply to tell the truth.

A. Well, I'm giving it to you. As I say, that gang kept away from me. Of course, I always knew in my own mind that they were responsible for these robberies that were going on—they always seemed to have money. Of course, a man didn't have proof of what they were doing. I haven't seen Johnny Bull now for at least eight months. About a year and a half ago he used to come down pretty often, but something happened at that time, and they got suspicious and kept away; and it, of course, pleased me.

Q. You are in this position: As I say, we have run onto your trail in investigating this case. There have been two sets of officers working on it. A part of the information we have in connection with this came through the secret service, and a part of it has come through Mr. Bryon's office. Now, we are going to clear this thing up from top to bottom, and every man who knows anything about it is going to tell what he knows about it. That is clear, is it? You are in no position to say here what you will or will not testify to. The only thing you can say is you will tell the truth. That is all we ask you to do.

A. I have told you the truth. I have told Glover the truth, and if the word of the secret service is not good—

Q. Well, I am not in the secret service. I am a prosecuting officer.

A. They have me to thank for what they accomplished in this case.

Q. We know more in this case than what you have told us, that didn't come from the secret service.

MR. BRYON:

“Salt Lake, 5:21 p. m. Evans State Bank, American Falls Draught Earl Lee Evans State Bank Draught Earl Lee 50.00 Pomade A Rossi everything rusty sending letter to nite Pendleton Ore. Tragent”

Q. Now, Mr. Rossi, does that refresh your memory any?

A. I sent a telegram but I never mentioned anything about a letter to Pendleton, Oregon. I don't understand that.

Q. That is just the reason I am reading it to you, to give you time to refresh your memory and get it right.

A. Yes, I sent telegrams, but that has nothing to do with this stamp case—the yeggs—absolutely not.

A. I bank at the Ashley & Rumelin Bank as Angelo H. Rossi. I got the stamps at the U. S. hotel, 2nd and Main streets, I think, in Whitey's room. There was no one present except Whitey and Johnny Bull.

MR VEATCH:

You say this fellow Stein was one of the fellows you attempted to sell to?

A. Yes, I asked him if he could use any and he said he would let me know, and then the secret service men came. I went to see a man previous to that named Sitton, but he wouldn't have anything to do with them. When I saw Mr. Sitton they were loose. I just told him I have a few stamps; that he was kind of a speculator, and asked him if he could use them. He said, "Well, I'll look them up." He went to the Federal Reserve Bank and looked them up, and said they were no good, only on certificates, so I went back and got certificates. That same afternoon Walters came into the store and I gave the stamps to him.

Thereupon P. A. YOUNG was called as a witness on behalf of the Government, and, after being first duly sworn, testified as follows:

That he was foreman of the grand jury that returned the present indictment against the defendant Rossi and the other defendants; that he was present in the grand jury room at the time Rossi appeared before the grand jury; that Rossi came of his own accord and was warned that whatever he said would be used against him; that he

was carefully warned by the attorney in charge of the investigation, the said attorney being Mr. Veatch, the assistant United States attorney.

Thereupon the following questions were asked, the following answers given, and the following proceedings had:

Q. Did Mr. Rossi make a statement before the grand jury concerning the stamp transactions now under investigation?

A. He did.

Q. Will you state, Mr. Young, to the best of your recollection, what was said by Mr. Rossi at that time?

A. Do you object to my referring to my notes, or to notes that were taken by the secretary at the time?

MR. GOLDSTEIN: Can you testify of your own recollection, Mr. Young?

A. It has been some time, and those affairs are not affairs of my own particular line of education and business.

MR. GOLDSTEIN: That was not the question, Mr. Young. Pardon me, I merely asked you whether you can testify to any statements made by Mr. Rossi, right now, at this time.

A. Oh, a great many of them, yes.

EXAMINATION BY MR. GOLDSTEIN:

Q. You are able to give a statement of that. So far as those notes are concerned, you will admit, Mr. Young, you did not make those notes?

A. Some of them.

Q. Did you make any notes of anything Mr. Rossi said?

A. No; not in this.

Q. The general rule with respect to grand jury procedure is for the secretary to take the notes in the best way he can longhand?

A. While the secretary was absent I took a great many of the notes myself, that is, with respect to some of the testimony in this particular case.

Q. That is a little out of the ordinary, because the foreman does not like to do that work. But in any event, so far as the defendant Rossi is concerned, you didn't take any of the notes in your own handwriting of the things that he said?

MR. GOLDSTEIN: I therefore suggest, your honor, that Mr. Young do the best he can from his own recollection.

A. I will do so.

COURT: He can do that, and then he can refer to the notes if there are things he can't recollect about.

MR. GOLDSTEIN: We will see how he gets along.

Examination by Mr. Veatch resumed:

Q. All right, Mr. Young.

A. Mr. Rossi told us that he had had several stamp transactions, and I believe he began with one with reference to Mr. Sitton. He said that he had received stamps from—

MR. GOLDSTEIN: Pardon me, when was the grand jury investigation at the time he made this statement; was it in the month of May, 1920, or June?

A. May, wasn't it?

MR. GOLDSTEIN: The month of May?

A. Yes.

MR. GOLDSTEIN: It was in May, 1920, in any event. At this time, if the court please, I think it is only fitting and proper that the jury be warned and cautioned that, so far as the statements of Mr. Rossi are concerned, while they may be admissible as against him, in view of the fact that the conspiracy had long since ended, therefore any statements that Mr. Rossi made to him cannot in any event be considered binding upon any other defendants in this case, or cannot be considered in any event as proof of a conspiracy, being a declaration of a past event. There should not be any confusion or misunderstanding as to the extent and limitation of

this particular testimony. I therefore move at this time that the jury be so instructed.

COURT: Why do you insist on those instructions? I have already instructed the jury in substance as you have indicated, and I don't think that I will pick out individual circumstances and undertake to instruct this jury every time the question arises. The court will protect these defendants upon that line of investigation.

MR. GOLDSTEIN: In order that the defendants' rights may be further protected, I take an exception to the not giving of that instruction at this time.

COURT: You may have your exception.

MR. LONG: If the court please, I would like to have that request of Mr. Goldstein run to Mr. Peterson also, and exception.

COURT: Very well. All the counsel may have it.

Q. Did Mr. Rossi say anything about where he got these stamps?

A. He told us that they came from Mr. Peterson.

Q. Did he make any statements as to where the transactions with Mr. Peterson took place?

A. The transaction, the first transaction, I believe, took place in his store.

Q. In Rossi's store?

A. In Rossi's store, and afterward took place in Mr. Peterson's room.

Q. Did he say anything about the time of day on which the second transaction took place in Mr. Peterson's room?

A. I think it was about 7 o'clock in the evening.

Q. Did he say who was in the room at the time.

A. Yes. He said Johnny Bull, Mr. Peterson, and, I believe, he said that Russell Shawhan—

Q. State whether or not Mr. Rossi made mention of any other stamps or bonds in Mr. Peterson's room, at the time he made this second purchase of stamps.

A. We were asking him in regard to whether he thought the stamps were stolen, and he said that on the dresser, as he passed by, he saw a \$1000 bond and a \$500 bond, and he suspected that they were stolen.

MR. GOLDSTEIN: What were stolen?

A. That the stamps and the bonds probably were stolen, that was his version of it.

Q. Did he say anything about getting any stamps from Peterson or any one else after this time?

A. Well, I could tell by referring to the notes, but I don't recollect it.

Q. Well, do you recall, Mr. Young, whether or not Mr. Rossi made a statement of the individuals to whom he had sold or delivered the stamps?

A. Yes.

Q. Whom did he mention?

A. He first mentioned Mr. Brenner and then Mr. Smith, and Mr. LaSalle and Mr. Stein. I think that was all Mr. Rossi mentioned to us.

Q. Did he mention any one by the name of Mr. Sitton?

A. Yes, sir; but he told us that that transaction was previous to this transaction with Mr. Peterson.

Q. He stated the Sitton transaction was previous?

A. Yes, and that the stamps that he had given to Mr. Sitton were stamps that he had purchased from other parties; that they were on cards, I believe. And he also stated that he was borrowing money from Mr. Sitton from time to time, and using these for that purpose.

Q. Did Mr. Rossi make any statement as to whether or not he had any conversation with Mr. LaSalle concerning the stamps?

A. He said he had.

Q. Do you remember what Mr. Rossi said about that at the time?

A. I can't recall it. I know that it was Mr. Rossi's testimony that he had had some transaction.

Q. By referring to the notes—have you them there where you can refer to them, Mr. Young?

A. Yes.

Q. Could you refer to the notes and see whether or not your memory is refreshed in any way upon that?

MR. GOLDSTEIN: I object to his referring to the notes, upon the ground and for the reason that he has already testified that the notes were not taken by him, but were taken by some other person, and for the further reason he has testified of his own general knowledge as to the substance of the transaction concerning the testimony of Mr. Rossi.

MR. VEATCH: I would like, if the court desires, to have Mr. Young explain a little bit further as to how those notes were kept, as to whether or not they were read to the jury and corrected.

Examination by the Court.

Q. You were present when those notes were taken?

A. Yes.

Q. You heard the testimony as the notes were taken?

A. It was impressed upon us by the attorney that the notes were a very valuable part of our business; and at the close of each testimony the notes were read aloud by the secretary, and they were approved by the jury in session.

Q. Well, do you know when those notes were taken that they correctly stated what was testified to by the witness?

A. I do. I am positive.

Q. And you heard those notes read?

A. Yes.

Q. And when the matter was fresh in your mind?

A. Yes.

Q. And you know that they stated the truth as to what happened?

A. At to what happened, yes.

COURT: I think the notes are competent.

MR. GOLDSTEIN: I still insist on the objection on the further ground that that is not the best evidence. The best evidence is the production of the secretary himself who made the notes. I also object for the further reason that those notes have not been in the possession of Mr. Young since the notes were transcribed or taken last May and were out of his hands..

COURT: The objection will be overruled.

MR. GOLDSTEIN: Exception.

* * *

Q. Mr. Young, do you remember what Mr. Rossi said, if anything, about the stamp transactions with Mr. Brenner, where those transactions took place?

A. They took place in Mr. Brenner's store.

Q. Did he state whether or not any one else was present at the time.

A. He states that Mr. LaSalle was present in Mr. Brenner's store.

Q. Did he state whether that was in the first or second transaction, or in both?

A. I do not know.

Upon cross-examination the witness was asked the following questions, the following answers were given, and the following proceedings had:

Q. Did you know anything about Mr. Rossi prior to the grand jury being called, having given a full statement of his transactions to Mr. Glover, of the secret service department, or to Mr. Walters, the assistant? Did you know that?

A. We did not.

Q. Did you know or were you told—

A. We were told that partial information had been given.

Q. Were you told that in reliance upon the information that Mr. Rossi was asked to give that he had been promised immunity from prosecution?

A. We were told that he was promised immunity by Mr. Glover.

Q. Did Mr. Glover appear before the grand jury?

A. He did.

Q. Was Mr. Glover asked concerning the promised immunity?

A. He was.

Q. Did he say he had given such immunity to Mr. Rossi?

A. I believe he stated to us that Mr. Rossi's name would be kept inviolate by the secret service department.

Q. How is that?

A. He stated to us that this party's name would not be given out by the secret service; that if we found it out, it would come from some other party; that they would keep their faith with Mr. Rossi.

Q. You didn't answer my question. Did Mr. Glover state that he had promised immunity to Mr. Rossi for the information he gave?

MR. VEATCH: Objected to.

COURT: That is not cross-examination.

MR. GOLDSTEIN: I want to show to your Honor at least I want to bring out—which I think I am entitled to, and for that reason I make an objection to your Honor's ruling for this reason, that Mr. Young at the outset stated that Mr. Veatch was very careful to warn Mr. Rossi about his rights, and that anything that he might say might be used against him. I want to show that the grand Jurors at that time knew also of this previous immunity that had been given to Mr. Rossi before he testified.

COURT: I don't think you can question on that.

MR. GOLDSTEIN: Take an exception to your Honor's ruling.

COURT: Very well. You may have your exception.

The witness further testified that the date of Mr. Rossi's appearance before the grand jury was about June 8 or 9, 1920.

Thereupon G. H. MARSH was called as a witness on behalf of the Government and, after being first duly sworn, testified as follows:

That he is the clerk of the United States District Court for the District of Oregon, and is in charge of the records of that court.

Thereupon the following questions were asked, the following answers given, and the following proceedings had:

Q. State whether or not, Mr. Marsh, you have in your possession a record of the case of the United States of America v. Fred Peterson and Russell Shawan.

A. I have.

MR. GOLDSTEIN: Just a moment. It is very apparent what the purpose of this is.

COURT: What is the purpose?

MR. VEATCH: Fred Peterson and Russel Shawan—

MR. GOLDSTEIN: If the court please, it is very apparent the purpose of this testimony—it is apparent to me and undoubtedly it is apparent to your Honor—is to prove a certain judgment against a defendant who is one of the six defendants in this case. It is objected to on the ground that it is incompetent for the reason that it has no connection whatsoever with this identical case; that the proof of any other offense, whether civil or criminal, is no proof of anything in this case; that at best it might be only used for the purpose of impeachment; that it tends to influence and prejudice the minds of the jurors to determine the case upon something foreign and apart from the issues in this case, and if it is introduced with no other purpose than proving intent—

COURT: Let me see that record.

MR. VEATCH: I might state to the court, in order to save time, I only intend to consider the first two counts.

MR. GOLDSTEIN: That is plenty.

COURT: Was there a judgment entered in this case?

MR. VEATCH: Yes, sir.

COURT: What on?

MR. VEATCH: Counts one and two.

COURT: On a plea of guilty.

MR. VEATCH: Yes, sir.

COURT: This is in the state court. No. The other count was dismissed?

MR. VEATCH: Yes.

COURT: The third count?

MR. GOLDSTEIN: That is the reason they don't want to introduce it, I guess, because it was dismissed.

MR. LONG: The fourth count was dismissed too, your Honor.

COURT: Well, now, what is the purpose of it?

MR. VEATCH: The purpose of introducing that is for the purpose of introducing an admission

on the part of the defendant Peterson in regard to these particular war savings stamps that are in question here at the present time.

COURT: Are these part of the same stamps?

MR. VEATCH: Part of the same stamps.

COURT: The record does not show it.

MR. VEATCH: The record shows that on a certain date at a certain time and place the defendant Peterson had a number of stamps on his possession, from which the number 50819 had been erased.

COURT: That shows on the record there?

MR. VEATCH: Yes.

COURT: What is the objection?

MR. GOLDSTEIN: The objection is, in the first place, and the main reason, that an admission made by a defendant prior—when was the judgment entered, Mr. Marsh, or rather the plea?

A. May 18, 1920.

MR. GOLDSTEIN: Admission made by the defendant of the character of that admission is highly prejudicial to the other defendants in the case. They are in no wise connected with this defendant so far as that particular judgment is concerned. And for the second reason that if it is admissible at all, it is merely for the purpose of impeaching the credibility of the defendant Peterson, and should not be used at the present time in

view of the presumption and the rights and privileges that a defendant has, as your Honor well knows, placing him in a position of doing something that the Constitution protects him from.

COURT: Let me see that, Mr. Clerk.

Court examines record.

MR. GOLDSTEIN: And I further object on the ground that there has yet been no proof of a conspiracy so as to make an admission of this character admissible, in any event; and for the further reason that if it is for the purpose of proving intent, intent should be carefully limited and restricted to that particular purpose.

COURT: This plea of guilty was in May, was it?

A. May 18th.

COURT: I will admit this against the defendant Peterson alone, and I will instruct this jury that this testimony is not to be taken in any way as against any of the other defendants in the case. And this is admitted for the purpose of showing intent on the part of Peterson, by showing a similar act; and it is admitted also as showing an admission so far as it goes on his part of dealing with these stamps.

MR. GOLDSTEIN: With the further suggestion, if your Honor please, and further upon the understanding that a conspiracy be first established before the admission could be considered, in any event.

COURT: Well, of course, that is the charge here, conspiracy. Unless the conspiracy is established there will be no conviction on any of these counts. I will admit on the ground I have stated.

MR. LONG: If the court please, I would like to save an exception to the ruling of the court on the part of Mr. Peterson—to allow that objection of Mr. Goldstein to go to Mr. Peterson.

COURT: Yes, you may have your exception.

Q. Mr. Marsh, will you read counts one and two of that indictment?

A. (Witness reads): United States of America vs. Fred Peterson and Russell Shawan. United States of America, District of Oregon, ss. The Grand Jurors of the United States of America for the District of Oregon, duly impaneled, sworn, and charged to inquire within and for said said district, upon their oaths and affirmations, do find, charge, allege and present: COUNT ONE. That Fred Peterson and Russell Shawan, the defendants above named, on, to-wit: the 18th day of March, 1920, at Portland, in the State and District of Oregon, and within the jurisdiction of this court, did then and there, at said time and place, wilfully, knowingly, unlawfully, and feloniously have and keep in their, the said defendant's possession, with the intent and purpose on the part of them, the said defendants, to pass, publish, enter and sell the same, certain altered obligations and securities of the United States, to-wit: 174 United States War Savings Certificate Stamps of the series of 1918, which said obligations and securities had theretofore been altered by having removed from the face thereof

the registry number thereof, to-wit: number 50819, and said defendants at said time and place, then and there knowing said obligations and securities to have been theretofore altered in the way and manner aforesaid; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

And the grand jurors aforesaid upon their oaths and affirmations aforesaid, do further find, charge, allege and present: COUNT TWO. That Fred Peterson and Russell Shawan, the defendants above named, on, to-wit: the 18th day of March, 1920, at Portland, in the State and District of Oregon, and within the jurisdiction of this court, did then and there, at said time and place, wilfully, knowingly and feloniously, have and keep in their, the said defendants' possession, with the intent and purpose on the part of them, the said defendants, to pass, publish, enter and sell the same, certain altered obligations and securities of the United States, to-wit: 34 United States War Savings Certificate Stamps, on the series of 1918, which said obligations and securities had theretofore been altered by being removed from the certificate to which the same had been theretofore attached, the respective numbers of said certificates being to the grand jurors unknown, and said defendants at said time and place, then and there knowing said obligations and securities to have theretofore been altered in the way and manner aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Q. Does your record show, Mr. Marsh, the plea to that indictment as to the defendant Peterson?

A. The plea?

Q. Yes.

A. Yes.

Q. What was it?

A. The first plea was a demurrer to the indictment; subsequently he pleaded not guilty, and on May 18th he withdrew that—

MR. LONG: Just a minute. If the court please, they should not be allowed to go on and say what this man did, how he subsequently did this. The record is the best evidence of the plea. The judgment is the only thing admissible here. As a matter of fact this indictment is not admissible under any theory of the case.

COURT: The plea of guilty was entered; I suppose that is all that is necessary.

A. On May 18th, the defendant Peterson pleaded guilty as charged in counts one and two of the indictment.

COURT: A judgment of guilty was entered upon that?

A. Judgment and sentence was entered upon that plea of guilty.

After the Government had rested its case, JOHN C. VEATCH was called as a witness by the defendant and, after being duly sworn, testified as follows:

That he was an assistant United States attorney for the district of Oregon; that William Glover was secret service operative in charge during the month of March, 1920; that this case was first brought into his office by Mr. Walters, Mr. Glover's assistant; that he was informed at that time by Mr. Walters that they had obtained certain information and it would be necessary for them to cover up their information; that their informant was a man by the name of Rossi; that there was no further discussion of the case until the time of the commissioner's hearing, which was some time in the month of March, 1920, about two days after the arrest of Peterson, which occurred on March 18, 1920.

The witness was thereupon asked the following questions, and the following answers were given:

MR. GOLDSTEIN: I will again repeat my question to you, Mr. Veatch, so there need be no misunderstanding.

Q. Did you or did you not know, in the month of May, 1920, at the time you had Mr. Rossi come up to Mr. Bryon's office that he had in the month of March, 1920, given certain information to Mr. Walters, and that Mr. Walters had promised him immunity?

A. I knew that Mr. Walters had said Mr. Rossi would have to be covered up.

Q. Answer yes or no.

A. Well, I would answer yes to that.

Thereupon JOSEPH WALTERS was called as a witness by the defendant and, after being duly sworn, testified as follows:

That he was connected with the United States secret service for two years as agent at Seattle and Portland; that as such agent he came to Portland in the spring of 1919 and was stationed there until September 1, 1920, when he resigned from the service; that in the month of March, 1920, Mr. Glover was in active charge of the office at Portland, and that the witness was working under him; that in the month of March, 1920, the witness made an investigation concerning certain war savings stamps that had been reported to him as being circulated in the city.

Whereupon the following questions were asked, and the following answers were given:

Q. How did you get to Mr. Rossi?

A. Well, while in the Government service I promised a certain man immunity, and while I am no longer in the service I feel that promise is good, when the Government promised that man immunity.

Q. Whom did you make that promise to, Mr. Walters?

A. Angelo Rossi.

Q. When and under what circumstances did you make that promise?

A. On the afternoon of March 17, 1920.

Q. Did you make that promise of immunity in the presence of any one?

A. In the presence of John M. Riley.

Q. And based upon that promise did you get certain information from Mr. Rossi?

A. It was through him that I was able to locate the man that blew the Scio job and was handling these stamps.

Witness further testified that it was not an unusual practice for agents of the secret service to grant immunity in cases where their evidence is necessary to cause the proper investigation to be made; that it had been done in the past and he presumed it had been done in counterfeiting cases time and time again; that about March 17, 1920, he told Rossi that in return for the information he obtained he would not expose his name, and the witness thereupon, and on the next day, informed his chief, Mr. Glover, that he had promised Rossi immunity for the information that he received:

Thereupon WILLIAM A. GLOVER was called as a witness on behalf of the defendant and, after being duly sworn, testified as follows:

That he was an operative in charge of the United States secret service from 15 to 20 years in different parts of the United States; that he was stationed at Portland, Oregon, for about 10 years; that it is the duty of the secret service division to protect the obligations of the United States, and it is the only department of the Government so delegated that authority. In the month of March, 1920, he was in charge of the United States secret service at Portland, Oregon, and that Joseph Walters was an assistant working under him at that time.

Thereupon the following questions were asked of said witness, and the following answers were given by him:

Q. Had you in the month of March been making any investigation concerning the distribution of war savings stamps in this locality?

A. Some time during the early part of the year we received circulars that there were a great many brokers throughout the country dealing in war savings stamps, and was directed to make an investigation of that kind. I turned this matter over to my assistant, Mr. Walters, and we started to work here. This matter was taken up with Mr. Veatch. A man by the name of Randolph, who was then conducting the American Brokerage Company here, we was endeavoring to trace as to how many stamps he had in his possession at any one time. And he was under investigation at the time this other matter arose.

Q. So then you were investigating Randolph at the time this other matter arose?

A. Yes, sir, and that matter was known to Mr. Veatch.

Q. That matter was known to Mr. Veatch before the other matter arose, that you were investigating Mr. Randolph?

A. Yes.

Q. Had you known Mr. Rossi or had any dealings with him prior to Mr. Walters coming to you?

A. I never saw or knew of a man by the name of Rossi, this particular Rossi, no sir.

Q. And when did the first information come to you that there was a man by the name of Rossi, and that he was connected with war savings stamps?

A. I think it was on the evening of the 17th of March.

Q. And how was that information communicated to you?

A. On the 16th of March I was sitting in my office in the postoffice building and received a telephone from Mr. Wigton in the postoffice department. Part of our duties is to notify banks and postoffice departments of anything pertaining to our particular line of business. And Mr. Wigton said that there was a matter came up there about some war savings stamps that he thought looked a little suspicious. Those things come into our office very frequently. I told him that I would send Mr. Walters up to see him, and left a note—Mr. Wal-

ters was out on the street—I left a note on his desk to see Mr. Wigton. That is all that I knew until the next day. That was the 17th. Mr. Walters reported that he had followed this information down, and there was a man by the name of Rossi implicated. My wife was lying at the point of death during this time, and I turned over the matter to Mr. Walters to handle, called in the assistance of Mr. Charles Welter, who was an old man and well posted in all lines of this business. And I instructed Agent Walters to go by the advice of Mr. Welter.

Q. Mr. Welter being the postoffice inspector?

A. Yes, sir; a man whom I have been associated with for a number of years; know him as a very capable, efficient man.

Q. Then did Mr. Walters ever communicate the fact to you that he had promised any protection or immunity to the informant?

A. Yes, sir.

Q. And when was that?

A. That was, I believe, that was either the night of the 17th or the day of the 18th. I am not clear, for the reason that I was at home under strained circumstances in connection with the sickness of my wife.

Q. Had you yourself personally promised any immunity to Mr. Rossi?

A. Absolutely not at that time.

Q. And this promise had been given to Mr. Rossi by Mr. Walters, and Mr. Walters communicated that fact to you?

A. That is the fact, sir.

Q. Did you confirm it or ratify it by any conversation you had with Mr. Rossi?

A. Some days later Mr. Rossi came in, I believe it was after the preliminary hearing of defendant Peterson. Mr. Rossi came in, and he says he wanted to see the chief. I had never seen him. I asked Mr. Walters what he wanted, and he said he wanted to see the chief.

COURT: Who is the chief?

A. He meant me. So I went into the other room to see him. And that is the first conversation and the first time that I ever saw the defendant Rossi.

Q. What did he say to you at that time?

A. He said that he had been double-crossed before, and he was a little bit afraid—that Mr. Walters not being in charge of the district, that he was a little bit afraid maybe he would be double-crossed, and he had heard that I was a square-shooter, and he wanted me to pass my word on whether or not he was to be taken care of and kept under cover. At that time I told Mr. Rossi that it was not the usual custom of the secret service division to do anything of that kind, but that as I understood that he was to give information and was giving information at that time that it will probably

have to go, but I told him that we ought to use and probably would use him at the hearing or at the trial. And he told me that that was a case of double-cross absolutely, and was a little bit sore. And I asked him plainly, I said, "Mr. Rossi, is it absolutely your understanding that you was to be kept covered in this transaction? Did you get that from my office?" And he says, 'Absolutely, chief. Mr. Walters told me that.' I said, "Mr. Rossi, I am in charge of this office. If my man said that, I will make good." That is when I promised him to keep him covered.

Q. You promised to keep faith with the word of your assistant?

A. Yes, sir.

Q. Did you thereafter communicate that fact in any way to Mr. Veatch or any one connected—

A. Yes, sir.

Q. When did you communicate it to Mr. Veatch?

A. I think the next morning I took this matter up with Mr. Veatch before. Before the hearing I came into Mr. Veatch's office with this information and we went over it fully and talked this matter over. I told him that it probably was not a very good thing, maybe Mr. Walters might have made a mistake under the circumstances, but we had to keep this man covered, because the secret service had passed its word. This is one of the first things we learn in our business, that once the secret service word is passed we have to make good. And

Mr. Veatch and I went fully over this matter, how to arrange to keep Mr. Rossi's name out of it. At that time Mr. Veatch asked me if I thought Mr. Rossi was guilty. I told him that probably the most of those fellows like that, probably he might be, but it didn't make any difference; that he was to give valuable information, and was to do that and would make good; and for that reason we would have to keep him covered. Mr. Veatch agreed with me as to some way how to do it. And he went into court before the commissioner's hearing with that end in view.

Q. Did Mr. Veatch protect the testimony without divulging the informant?

A. Yes, sir. We both, with the assistance of Mr. Welter, went over this matter right in the courtroom during the commissioner's hearing how to keep Rossi's name out of this transaction.

Q. What next transpired as to cause this change of investigation from your hands, where it properly belonged to Mr. Bryon's hands?

A. After the hearing of Peterson we was then trying to locate approximately probably \$40,000 of \$50,000 worth of loot that was somewhere in this vicinity at this time. And I was getting valuable information through my informant in regard to this. The secret service works in a proposition of that kind to keep as quiet as possible and not go to too many people while they are trying to discover the corpus delicti of a case, the loot. And it was while we were working underneath the cover to get this information that I received a telephone from Mr. Rossi. And he says, "What are you trying to

do to me? Are you double-crossing me, chief?" I says, "What are you talking about?" "Well," he says, "I have been up to Bryon's office five or six times today." He says "What are you trying to do to me?" "Well," I says, "I don't know anything about it. You had better come over to my office."

Q. When was that? What month?

A. That was during the month of—probably in the month of March—the latter part of March, shortly after the hearing. It might have been later than that. He came over to my office, and he told me that he had been up to Mr. Bryon's office. Mr. Bryon had asked him about this case, and that he told Mr. Bryon that I knew all about it.

MR. VEATCH: Just a minute. Are you testifying as to what Mr. Rossi told Mr. Bryon?

A. Testifying to what Mr. Rossi told me.

MR. VEATCH: This is a self-serving declaration. Mr. Rossi is in the courtroom. If he wants to testify to that he can.

MR. GOLDSTEIN: I think I am entitled to that, if the court please.

COURT: I think that is self-serving.

MR. GOLDSTEIN: I take exception to your Honor's ruling.

COURT: You may have your exception.

Q. When, if at any time, were you notified by Mr. Veatch that the secret service department was to lay off and let Bryon's office do it?

A. Mr. Rossi was in my office at this conversation.

Q. When was that?

A. That was in the latter part—well, I can't get the date, unless you get it in the statement, but it was evidently made—this conversation took place on the date that this statement as prepared in Agent Bryon's office took place.

Q. That is May 13, according to the testimony.

A. Then it must have been May 13.

Q. That is what I want to know—was it between March 17—

A. Between March 17 and up until this date.

Q. May 13.

A. Mr. Rossi was getting information for me.

Q. You were receiving information frequently from March 17 to May 13 from Mr. Rossi?

A. Yes; and we investigated a place or two where this loot was supposed to be from information that I had received.

Q. And the first intimation that you received that you were no longer desired was in an indirect way from Mr. Rossi?

A. It came through Mr. Rossi. While Mr. Rossi sat in my office Mr. Veatch called me, said, "Hello,

Bill." I says, 'Hello, John,' He says, "I will have to throw that friend of yours, Rossi, in the can." 'What for?' 'Well,' he says, 'He has been mixed up in these war savings stamps.' "Well," I said, "You knew that, John, didn't you, all the way through?" Well, he said that he thought he better go to jail. And this happened in the presence of Rossi. And I said to Mr. Veatch, I said, 'John, you better wait till I talk over this matter with you, and I will see you in the morning.' Made an appointment to see Mr. Veatch in the morning, which I did. And I went over the matter and told him as far as the question of guilt was concerned that was not one—two—three. That we were getting information at that time, and that he already had known of this matter before he went before the hearing.

Q. In the meantime, was this source of information being lost and destroyed by newspaper publication as to what Bill Bryon was doing and what Veatch was doing?

A. Mr. Veatch told me that he was going to use Bryon's office, and I told him that I washed my hands of it entirely. I instructed my boy to have nothing more to do, any more than to assist the United States attorney's office at any time he so desired, and he did. Whenever he desired anything from my office as far as getting war savings stamps brought back from the Treasury Department, which his department could not get, he got them.

Q. So you washed your hands of the case then?

A. Yes, sir.

Q. When was that?

A. That was on that date, May 13, the day that I received this information. Not that date, but the next day after I talked with Mr. Veatch. My appointment with Mr. Veatch must have been on May 14.

Q. That is when you found out that your word, the secret service agent, was not going to be kept?

A. Yes, sir. I had no more connection with the case whatsoever.

* * *

Q. Did you come to me and ask me to put you on the stand?

A. I did, sir, night before last.

Q. Why did you ask that?

A. When I saw—the reason for asking you to put me on the stand—I saw that Mr. Veatch was not going to put me on the stand so I could explain away some of this newspaper notoriety that has been filtering here for the last six months; so I came to you and requested you to give me a chance to get the truth before this court and my friends here.

Q. This was a personal request of me as a friend of yours?

A. Yes, absolutely.

COURT: Who is your friend?

A. Well, I have friends all over the coast, your Honor.

COURT: I thought you meant Rossi.

Thereupon at the close of Mr. Glover's testimony the defendant made the following motion, and the following proceedings were thereupon had and taken, to-wit:

MR. GOLDSTEIN: At this time, if the court please, in view of the testimony of Mr. Walters and of Mr. Glover, who, the testimony indicates, were then agents in charge of the secret service branch of the Government, and who were then and there acting and qualified to act as such, that they had secured certain information from Mr. Rossi upon certain inducements held out to him of hope of being shielded and protected from prosecution concerning his connection with the stamps, I move that any statements or admissions introduced in evidence, subsequent to that promise and subsequent to securing information through him, based upon that hope, be stricken out, on the ground that it is involuntary, and on the ground it was induced by hope on the part of Mr. Rossi, and not a voluntary statement made by him without the holding out of such hope.

COURT: This is an indictment upon a charge of conspiracy, And even if Rossi had given this information under inducement, yet the information would be pertinent for determining whether or not he and the other parties—alleged parties to this conspiracy were really and actually engaged in the conspiracy. So that, take it any way you like, the testimony of the admissions of Rossi would be pert-

inent in this case. As to how it would affect Rossi himself, the court will instruct the jury about that. I will overrule the motion.

Exception allowed.

BE IT FURTHER REMEMBERED, that during the course of the trial and on, to-wit, October 29, 1920, the following proceedings were had in open court:

MR. LONERGAN: If the court please, at this time I feel it my duty to call your Honor's attention to what appears in the Oregonian this morning in reference to the trial of this case. I don't know whether your Honor has read that article or not.

COURT: No, I have not.

MR. LONERGAN: It is an article that contains so many misstatements of fact and so many misstatements as to the evidence introduced here on this trial on yesterday that it could not have been written by one who was present at this trial, but must have been given to the reporter by some other source. I am making no accusations of any kind, but I think your Honor ought to be advised as to this because I do not know what the effect may be.

COURT: I will say to the jury, if any of you read that article that you will put it out of your mind and not carry it into this case. I will look at it this evening.

Thereupon after the close of the evidence in the case, the defendant made the following motion on behalf of the defendant:

Now, if the court please, in addition to the grounds of this motion for these three defendants jointly, I renew the motion for a directed verdict as to the defendant Rossi upon the following additional grounds:

1. That the only proof of any possible connection of the defendant Rossi with any possible conspiracy is based upon admissions and confessions made by him to an arresting officer of the United States and to one then in authority to hear and receive such admissions and confessions; that it is conceded that the arresting officer induced the making of such admissions and confessions by holding out to Rossi a promise of immunity from prosecution, which promise Rossi relied upon, and which promise had never subsequently been withdrawn. It therefore follows that the admissions and confessions made by Rossi were not free and voluntary, but were involuntarily made and induced by hope, and therefore should have been stricken out.

Whereupon the following proceedings were thereupon had:

COURT: The motions will all be overruled. And it is not necessary for me to undertake to restate the evidence, because that is a matter for the jury, and I don't care to say anything that might influence the jury.

MR. GOLDSTEIN: Exception, your Honor.

MR. BERNSTEIN: We will all be allowed an exception?

COURT: Yes, you will all be allowed your exceptions. Mr. Veatch, the court has about come

to the conclusion—I would like to hear from you about it—that by the testimony of Mr. Glover and Mr. Walters, which is practically uncontradicted by any other witness, it appears that immunity was extended to Rossi, and therefore that his statement made to Bryon and the parties there present, yourself among the rest, is not competent proof against Rossi, and it ought to be stricken out. I could not decide this question before this time, because I did not know what rebuttal testimony there would be offered by yourself as to the testimony of Glover and Walters.

MR. VEATCH: I would like to say this, your Honor, that whether or not Glover or Walters ever made any promise of immunity to Mr. Rossi, there is absolutely not one single bit of evidence in this case that was ever obtained from Mr. Rossi under any promise of immunity. If the court remembers, in the statement of Mr. Rossi, which was taken down by a stenographer, he was specifically told in the beginning that he did not have to say anything, or that he was not promised anything. There is no evidence in the case that was obtained through any promise to Mr. Rossi.

COURT: I have an idea he had a right to rely upon that promise, and very likely did rely upon that promise for immunity when he was called before Mr. Bryon and there caused to make a statement. The warning extended to him, of course, was proper and right, but I doubt whether that warning will deprive him of his right to depend upon the immunity that was offered him by a detective officer. There was some testimony, there was some information given by this defendant Rossi which led to the arrest of Peterson; and so far as

he is concerned, according to the understanding as testified to by Glover and by Walters, Rossi did give some information which led to the detection and the arrest of Peterson with these stamps on his person or in his room; so that Rossi, having carried out what Glover said was his part of the agreement, and having rendered that service which led to the arrest of the defendant Peterson, he has performed his part of the agreement, and Walters having extended him immunity, I think he is entitled to be relieved from the effect as against him of that testimony.

MR. VEATCH: That is only as to his admissions before Mr. Bryon.

COURT: Yes.

MR. VEATCH: How about the admissions before the grand jury?

COURT: I think that must go the same road.

MR. GOLDSTEIN: How about the admissions to Mr. Walters? How about the delivery of the stamps to Mr. Walters?

COURT: I think that is a question of fact—the delivery of the stamps to Walters.

MR. GOLDSTEIN: In any event, if the court please, your Honor has already ruled with respect to certain prejudicial matter that has been heard by the jury. In view of your Honor's ruling, I at this time move for a mistrial as to the defendant Rossi, for these grounds: Ordinarily it is a question for the court to determine the voluntary char-

acter of testimony and where it is likely to be prejudicial, where the voluntary character of the testimony is challenged, as I challenged it at the time it was sought to be introduced, the jury ought to have been removed, but your Honor permitted the testimony to go in upon Mr. Veatch's assurance that it would be connected up, upon Mr. Veatch's assurance that the promise of immunity would have no effect upon this testimony. In any event, there has been a certain prejudice done to the defendant Rossi that cannot be removed by your Honor's merely advising the jury to disregard it. The effect has been had; the danger of the defendant's constitutional safeguards has been caused, and I think it is unfair, so far as the defendant is concerned, with respect to his constitutional safeguards—I am not discussing the matter of evidence here or the sufficiency of lack of sufficiency—I am discussing certain constitutional safeguards that are placed around every defendant, no matter how guilty of an offense he may be. And that protection is taken away from him when the jury is permitted to hear a long-drawn-out confession of connection between Rossi and yeggmen, of Johnny the Bull and Johnny that. There is that atmosphere of association and connection with criminals that should not have been permitted here, and if your Honor had been previously advised of the immunity it would not have been admitted here. The damage has been done, and he ought to be given a new trial with that testimony eliminated and then see what a jury might do upon the other state of facts that the Government could present. So I feel at this time that I should make a motion, and I have made it.

COURT: The counsel can see very clearly why the court could not act before. In the first place,

it was not apparent to the court how long this conspiracy continued, and the court could not say as a matter of law, until the evidence was all in, about when it closed. That as to the statements of the co-defendants—as to the admission of Rossi that was made under the promise of immunity, the court could not tell what rebuttal testimony would come as against the statement of Glover and Walters; hence the court could not say as a matter of law, until the Government had a right and a chance to rebut that testimony, if it had it in its power. That was the condition and position of the court, and the court could not act until it could act intelligently. I am now acting upon that. I will say furthermore as to the testimony of Walters, the fact that he took those stamps from the possession of Rossi,—I think that ought to go with the other testimony, because Rossi had been promised immunity, and all that testimony which would affect him coming in that way should be stricken out.

The court will not grant a mistrial.

You may have your exception.

IT IS HEREBY CERTIFIED that there was no evidence introduced in this case tending to show that any of the stamps which are embraced in this indictment were stolen by the defendant Rossi; that the only evidence tending to show theft on the part of any of the defendants was that introduced to the effect that there was found in the possession of co-defendant, Peterson, a number of stamps that were alleged to have been recently stolen from the Scio bank.

That thereafter the court reconsidered his ruling previously announced with respect to the statement of Rossi before the grand jury, and made the following ruling:

COURT: I want to say to counsel that since reconsidering the matter of the statement I made yesterday about striking out certain testimony as it related to Rossi, the court will adhere to its former statement that his statement to Bryon will be stricken out; but the statement that he made to the grand jury will remain. I have come to this conclusion deliberately, after examining the proffered instructions and consulting the law. I will give my reason why the grand jury statement should stand. Rossi deliberately asked to go before the grand jury and his appearance there was entirely voluntary on his part, knowing that immunity had been promised him; and he was there warned that any statement he made might be used against him; and having gone there of his own accord entirely voluntarily, without being called by the grand jury or anybody else, I think that statement ought to stand. Hence I want to advise you that before you go into the argument, so there will be no misunderstanding.

MR. GOLDSTEIN: May I have an execution, your Honor?

COURT: You may have your exception.

It further appeared that after the close of all of the evidence in the case and after the arguments of counsel, the court charged the jury as follows:

INSTRUCTIONS OF COURT TO JURY.

Now, gentlemen of the jury, you have heard the testimony in this case and the arguments of counsel pro and con, and it now becomes the duty of the court to instruct you touching the law of the case, so that you will take the instructions of the court and be thereby guided, and be enabled the more readily to ascertain what the facts are under the evidence. The defendants Peterson, Rossi, Brenner, LaSalle, Smith and Stein have all been indicted under one indictment for the offense of conspiracy, which is a violation of Section 37 of the Criminal Code.

The indictment, I will instruct you at the outset, is itself not evidence against the defendants. It is a mere accusatory document, which has been preferred by the grand jury, and which puts the defendant upon trial as to his guilt or innocence. But the document itself is not to be taken or construed as any evidence whatsoever against the defendants in this case. The defendants have been tried here under that document, and you will pay attention only to the evidence here in determining whether or not the defendants or any of them are guilty under the charge made against them.

The defendants have entered pleas of not guilty to this indictment. Those pleas put in issue every allegation of every material matter in the indictment, or they put in issue every element which goes to make up the offenses with which they are

charged. That puts upon the Government the burden of establishing to your satisfaction, beyond a reasonable doubt, every material allegation of the indictment and every element which goes to make up the offense with which the defendants are charged; and it is incumbent, therefore, upon the Government to establish these facts to your satisfaction beyond a reasonable doubt.

The defendants under the law and under the Constitution of this Government are presumed to be innocent until they are proven guilty beyond a reasonable doubt. That presumption is one of substance, and it abides with the defendants throughout the trial, and until the evidence adduced has been sufficient to convince you to a moral certainty and beyond a reasonable doubt of their guilt. The presumption of innocence is an assumption of proof created by law in favor of one accused, and is evidentiary in effect, whereby his innocence is established until sufficient evidence is introduced to overcome the proof which the law has created.

I will also advise you that you are trying the defendants upon the indictment that has been preferred against them, and for the offense thereby charged. You are not trying them upon any other offense. And I will call your attention also to the fact, which has been alluded to by counsel, that the newspapers have had something to say about this case in giving the evidence that has been adduced here, and in comments thereon. But I advise

you in the beginning that you are not to take any note of what the newspapers have to say about this case, or, if you should have read any comment that the newspapers have made regarding the case or regarding the testimony, you should lay that to one side and confine your attention wholly and absolutely to the testimony that has been adduced here, and determine what your verdict shall be upon that testimony alone.

Now, in order that you may understand what the issues are, it is necessary that the court shall allude to the indictment more specifically.

Now, these defendants are charged with combining together and agreeing together between and among themselves, and with divers other persons, to commit the acts made offenses and crimes by the laws of the United States, to-wit, Sections 148 and 151 and 154 of the Penal Code of the United States, and to defraud the United States, that is to say, that the defendants did, on the day named conspire, combine, confederate and agree together between and among themselves to devise and execute and did devise and execute a plot, plan and scheme to falsely make and alter certain obligations and securities of the United States, namely, United States War Savings Certificates and United States War Savings Certificate Stamps, and to pass, publish, utter and sell, said altered obligations, and to have and keep the same in their possession, and to conceal the same with intent and purpose on their part to defraud the United States and individual per-

sons, whose names are to the grand jury unknown, and to buy, receive, sell, exchange, transfer and deliver said falsely made and altered stamps with intent and purpose on their part that the securities passed, published and used as true and genuine, and to defraud the United States by presenting for redemption and causing the United States to redeem and purchase said falsely made and altered obligations of the United States; that it was a part and portion of said combination and agreement that said plot and scheme to commit the acts made offenses and crimes by said Sections 148, 151 and 154 of the United States Penal Code, and to defraud the United States as aforesaid, was to be carried out, effected and put into operation by the following methods and plan: that the defendant Peterson and others were to steal and carry away from the owners and custodians thereof certain United States war savings certificates and United States war savings certificate stamps; that thereupon and thereafter said Peterson and others were to remove from said United States war savings certificates certain United States war savings certificate stamps thereto attached, and to remove and erase from the face of said war savings certificate stamps so removed from said United States war savings certificates certain registration and identification numbers thereon; that thereupon and thereafter Peterson and others were to pass, sell, transfer and deliver said stamps so removed and altered to the defendant Rossi; that said defendant Rossi was to buy, receive, keep in his possession and conceal the

stamps so removed and thereupon and thereafter was to procure blank United States war savings certificates and attach thereto said United States war savings certificate stamps so removed and altered, and pass, sell, transfer and deliver said United States war savings certificates so procured, together with other United States war savings certificate stamps so removed and so altered as aforesaid to the defendants Rossi, LaSalle, Brenner, Smith and Stein, and divers other persons; that said defendants LaSalle, Brenner, Smith and Stein and others were to buy, receive and have and keep in their possession and conceal said United States stamps so passed and transferred, and were thereupon and thereafter to sell, transfer and deliver said altered stamps to various and divers persons whose names are unknown; that it was a part and parcel of said unlawful conspiracy that said United States war savings certificates and United States war savings certificate stamps should be procured, altered, passed, published, uttered, exchanged and concealed in the way and manner aforesaid, with the intent and purpose on the part of them to defraud the United States and individuals whose names are unknown to the grand jury, with the intent and purpose that said United States war savings certificates and United States war savings certificate stamps so altered be passed, published and used as true and genuine.

Then it is alleged that the said conspiracy was entered into on the first day of March, 1920, and that it continued in operation until about the 20th

day of March, 1920, the exact date being to the grand jurors unknown; and that during the meantime the conspirators continued in full operation under the agreement.

Now, then, this is the charging part of the indictment as to the conspiracy.

It is further charged that in pursuance and in furtherance of the unlawful conspiracy, the defendant Peterson on the 3rd day of March, 1920, at Scio, in the State and District of Oregon, did then and there steal the said stamps from the bank of Scio, and then the stamps are described with considerable detail. It is not necessary for me to read that to you. This is one of the acts alleged in the indictment that were done for the purpose of carrying the conspiracy into effect; and it is further alleged that for the purpose of carrying the conspiracy into effect, Peterson, with intent and purpose on his part to defraud the United States and individual persons, did on or about the 4th day of March remove from said United States war savings certificates the said war savings certificate stamps thereto attached.

And as a third act which was done in pursuance of the conspiracy, it is alleged that Rossi did, on or about the 5th day of March, have and keep in his possession these altered stamps, knowing them to be altered.

And fourth and fifth it is alleged that the defendant Rossi did, on or about the 8th day of March, deliver to the defendant Dave Stein 63 of the stamps.

And sixth it is alleged that the defendant Stein did on the 8th day of March have and keep in his possession and conceal 63 of the stamps.

And seventh that on or about the 9th day of March, 1920, the defendant Stein did sell and deliver to Philip Tobin 63 of the stamps.

And eighth, that the defendant Rossi did, on or about the 10th day of March, sell, transfer and deliver to Smith 50 of the stamps.

Ninth, that the defendant Smith did, on or about the 10th day of March, 1920, have and keep in his possession and conceal 50 of the war savings stamps.

Tenth, that on or about the 10th day of March, 1920, Smith did pass, sell and deliver to Julius Hems 50 of the stamps.

Eleventh, that on or about the 10th day of March, 1920, the defendant Rossi did pass, sell, transfer and deliver to William Brenner 214 of the stamps.

Twelfth, that on or about the 10th day of March, 1920, Brenner did buy and receive from Rossi and have and keep in his possession and conceal 214 of the stamps.

Thirteenth, that on or about the 11th day of March, 1920, Brenner did deliver to the defendant LaSalle 66 of those stamps.

Fourteenth, that on the 11th day of March, 1920, the defendant LaSalle did pass, sell and transfer and deliver to George Randolph 66 of the stamps.

Fifteenth, that on or about the 17th day of March, 1920, the defendant Brenner did pass, sell, transfer and deliver to Robert LaSalle 148 of the stamps.

Sixteenth, that LaSalle did, on the 17th day of March, 1920, buy and receive from Brenner and have and keep in his possession and conceal 148 of the stamps.

Seventeenth, that on or about the 17th day of March, 1920, LaSalle did pass, transfer and deliver to George Randolph 148 of the stamps.

Eighteenth, that on or about the 17th day of March, 1920, Rossi did procure certain blank United States war savings certificates, to-wit, war savings certificates of the series of 1918, describing them, and attach to said certificates 20 United States war savings certificate stamps so removed and altered.

These allegations of acts that the defendants have done for the purpose of carrying into effect the conspiracy, which is alleged to have been entered into, are called and termed overt acts.

A conspiracy is a combination or confederation, or an agreeing together of two or more persons to do an unlawful act, or a lawful act in an unlawful manner. It has for one of its elements a corrupt purpose, that is, to obtain some undue advantage, or to perpetrate a fraud. The unlawful combination or agreement may be brought about by express understanding between the parties to accomplish the object designed, but not necessarily so. It may be consummated by tacit consent, whereby there has been a concurrence of mind and action of and between the parties, showing forth a common design or aim to accomplish a common unlawful object or purpose. And it may be evidenced, and commonly is, by a concert or harmony of declaration and action, or of either, indicative of the carrying out and effectuation of the common unlawful purpose or design. It is not essential that all the parties to the conspiracy act concurrently in matter of time, but the plot may be of a nature to be accomplished by a series of transactions and within some length of time, and the different parties may have different things to perform, and at different times; but in the end, if it is obvious that the parties acted in concert, one doing one part, another another, and so on, all in harmony one with another, until a common unlawful purpose has been consummated, it must be considered that they conspired to effectuate the common unlawful object or purpose. Nor is it essential that the conspirators shall all assent to the common plot or scheme at one and the same time. Others may connect themselves

therewith after its conception, if, with knowledge thereof, and of its purposes, they assent to the project, or by concert of action lend aid and assistance in effectuating the common object.

Mere knowledge or passive cognizance of a conspiracy, without co-operation or agreement to co-operate, is not enough to constitute one a party to a conspiracy. There must be active co-operation and intentional participation in the transaction, with a view of a furtherance of the common design and purpose.

Under the statute, the conspiracy must have for its object the commission of an offense against the United States, or to defraud the United States.

The charge here, as you have been advised, is that the defendants conspired both to commit an offense, or rather offenses against the United States, and to defraud the United States.

The conspiracy is the gist of the offense. That means the combining and confederating together to effect the purpose and object thereof. But, under the statute, the offense is not complete until one or more of the conspirators has done some act or acts to effect the object of the conspiracy. These are called overt acts. So that it takes both—the conspiring, agreeing, and confederating together for accomplishing a corrupt purpose, and the doing of some act or acts by one or more of the conspirators to effect such purpose or object, to constitute the

completed offense. The offense is deemed to be complete and to have been committed, when these things have been done, and it is not essential that the entire plot or scheme devised shall have been fully and wholly accomplished.

It is the law, and I so further instruct you, that the declarations and acts of one or more of the conspirators made or done while the common purpose of the conspiracy is being effectuated, that is, while the parties are actively engaged in carrying the plot or scheme devised by the conspirators into effect, to the end that they may accomplish the common unlawful purpose, are to be deemed the declarations and acts of all. But it is only to this extent that the declarations or acts of one or more will bind or effect all of them. The declarations or acts of one or more of the parties, made or done after the conspiracy has terminated, and after the conspirators have ceased to co-operate actively, or to act together for the effectuation of the common unlawful purpose, design, or object of the conspiracy, do not bind or affect any other party or parties to the original scheme or plot, or any party or parties to the conspiracy.

Section 148, Penal Code, makes it an offense against the United States for any one, with intent to defraud, to falsely make, forge, counterfeit or alter any obligation or other security of the United States.

Section 151 makes it a like offense for any one, with intent to defraud, to pass, utter, publish, or sell, or to keep in possession, or conceal with like intent any falsely made, counterfeited, or altered obligation or other security of the United States; and

Section 154, a like offense for any one to buy, sell, transfer, receive, or deliver any false, forged, counterfeited, or altered obligation or other security of the United States, with intent that the same shall be passed, published or used as true and genuine.

All these have the element of the intent to defraud: The first, by falsely making or altering a Government obligation; the second by passing or selling, or having or keeping in possession, or concealing any such falsely made or altered obligation; and the third, by selling, transferring, receiving or delivering any such, with intent that the same shall be used as true and genuine.

The defendants are charged, as I have shown, with conspiring to commit all these offenses, and to defraud the United States and individuals whose names were unknown to the grand jury. If the defendants, or any one or two or more of them, so conspired to commit any one or more of such offenses, or to defraud the United States, and any one of them did one or more of the acts alleged in the indictment as having been done to carry the object of the conspiracy into effect, the defendants thus conspiring would be amenable to the charge.

Now, while it is alleged that it was part of the plot that Peterson should steal the war savings certificates, with stamps attached, from their owners, and that he was to remove the stamps from the certificates and to erase the registration numbers from the face of the stamps, and thus to alter the war savings certificates and the stamps attached, and then to sell, transfer, and deliver them to Rossi, and that Rossi was to receive and keep in his possession such altered war savings certificate stamps, and thereafter to sell, transfer, and deliver such altered stamps to the defendants Robert LaSalle, William Brenner, W. E. Smith and Dave Stein, and others who were to buy, receive and keep them in their possession, and thereafter to sell and deliver them to others, all with the intent and purpose of defrauding the United States and individuals whose names are unknown, and with the intent to pass such altered stamps as true and genuine, I instruct you that Peterson is not being prosecuted here for having stolen the war savings certificates or war savings certificate stamps, nor for having counterfeited or altered them, nor for having them in his possession, or selling or passing them as true and genuine, and cannot be convicted of those offenses under the present indictment.

And so of the defendant Rossi and the other defendants; they cannot be convicted of having received or kept in their possession falsely made or altered obligations of the United States, or for having uttered or passed them as true and genuine, because they are not so charged.

The only offense with which the defendants are charged under the indictment, is that of conspiracy. That is the only cause on trial here, and you should confine your inquiry to that cause alone; and unless the defendants, or two or more of them, are guilty of that particular offense, they must be acquitted. You are not to understand, however, that you are not to take into consideration what the defendants, or any of them, have done, according as the evidence may tend to show, conducing to their inculcation. You should examine very carefully all the competent evidence offered with respect to the declarations and acts and demeanor of all the defendants, as it relates to these war savings certificates and war savings certificate stamps, in order to ascertain, if possible, how they came into the possession of the defendants, or any of them, if they ever had such possession; as to whether they were falsely made or altered by them, or any of them, if at all; as to whether they were sold or transferred, or received by them, or any of them; and as to whether they, or any of them, were uttered or passed as true and genuine; all for the purpose of determining whether the defendants, or any two or more of them, conspired together, as alleged, to commit these offenses, or any of them, or to defraud the United States. All these matters, as alleged,—and you will be further advised thereof by a perusal of the indictment, which you will have with you in the jury room—are to be inquired into by you for ascertaining whether or not the defendants, or any two or more of them, are guilty or not

guilty of the charge of conspiracy as alleged. I have said you should examine all the competent evidence relative to the inquiry just submitted. Later I will advise you with respect to certain evidence that should not be considered by you, and certain other evidence that you should apply in a special manner.

Under the Act of Congress of September 24, 1917, the Secretary of the Treasury was authorized to issue war savings certificates in such form or forms, and subject to such terms and conditions, as he might prescribe. He was also authorized, under such regulations and terms and conditions as he might prescribe, to issue or cause to be issued stamps to evidence payments for or on account of such certificates. Under proper regulations of the Secretary of the Treasury, it was prescribed that payments for or on account of such war savings certificates must be evidenced by United States war saving certificate stamps which were to be affixed thereto. And the regulations further prescribed that a United States war savings certificate should be an obligation of the United States when, and only when, one or more United States war savings certificate stamps should be affixed thereto; and that the name of the owner of each war savings certificate must be written upon such certificate at the time of the issue thereof. The regulations also provide for registration of the war savings certificates at any postoffice of the first, second or third class, and that unless registered, the United States

will not be liable if payment in respect of such certificates be made to a person not the rightful owner thereof.

By analysis of the act and the regulations of the Secretary of the Treasury, it will be seen that two kinds of paper or documents were authorized to be issued, namely, war savings certificates and war savings certificate stamps. The certificates are the larger squares of paper or pasteboard that have been shown to you here, and the stamps are the smaller pieces of paper, containing the printed legends thereon, which are pasted upon the certificate or pasteboard.

It appears that the stamps are sold separately from the certificates, and the testimony tends to show that the certificates may be obtained by application to certain Government agencies for them. But a stamp when so issued, separate from the certificate, is not an obligation of the Government any more than a postage stamp, and will be redeemed only in a certain way. That way is provided by the regulation just alluded to, and is by affixing it to a war savings certificate and writing and indorsing the name of the owner on the certificate. When so made up and perfected, the certificate, with a stamp or stamps attached, becomes an obligation of the Government, and not until then. Such a certificate is then susceptible of registration. The manner in which a registration is had has been described to you. It is by stamping the number of the postoffice

with the serial number of the stamp upon the face of such stamp registered. Being so registered, the Government is obligated to pay the owner the value of the stamps at the postoffice where registered. These certificates, with a stamp or stamps attached, are obligations of the United States within the meaning of sections 148, 151 and 154 of the Penal Code.

I further instruct you that a removal of the stamps from the certificate, if done with intent to defraud, would be tantamount to an alteration of a Government obligation, and would, in effect, render it a falsely made certificate or obligation within the purview of section 148 of the Penal Code, and would constitute a violation thereof. So if one should erase the registration number from the face, of the stamp, or the owner's name from the certificate, with the intent to defraud, he would be guilty of an alteration of such certificate, and would commit the offense denounced by section 148. It would not be an alteration within the meaning of this section to erase the serial number on the certificate, because that would not be a material alteration. I have reference to the serial number which is on the certificate, not to the number which is stamped upon the stamp itself when the registration is had. So you will keep those two numbers in your mind, and not misconstrue the instruction of the court.

Again, any one who shall sell, receive or have in his possession any such altered or falsely made cer-

tificates, knowing them to have been so altered with intent to defraud, would be amenable for a violation of section 151 of the Penal Code. And so, if any one shall pass or utter any of such forged or falsely made certificates or stamps, knowing them to have been so altered with intent that they should be passed or used as true and genuine, he would violate the denunciation of section 154 of the Penal Code. So that, if it was the object of the alleged conspiracy to violate any one of these penal statutes in the manner I have indicated to you, the participants would be amenable to the conspiracy statute; and so also would they be amenable if it was their object to defraud the United States.

I further advise you that any false making or alteration of any obligation of the United States, with intent to defraud, would be a fraud upon the United States. So would the passing or having in possession any of such altered paper, with intent to defraud, knowing it to have been altered, or the passing or altering of the same, with intent that the same shall be passed and used as genuine, be a fraud on the United States.

You will apply these rules in the present case and determine whether, under the evidence, the defendants, or any two or more of them, did in fact enter into a conspiracy to violate any of these statutes, or to commit any of the offenses denounced thereby, or to defraud the United States, and if you find that they did so you will ascertain whether any one of the conspirators committed any of the acts alleged in the indictment, which it is alleged were

committed for the purpose of carrying into effect the object of the conspiracy. If so, there would be a violation of the conspiracy statute which I have explained to you; otherwise, not.

Some question has been made as to the time when active operations ceased under the alleged conspiracy. The time stated in the indictment is somewhat elastic, namely, on or about March 20, 1920, the exact date being to the grand jurors unknown. It is important that you ascertain the exact date in order to determine how the alleged conspirators are to be effected by the declarations or acts of some one or more of them. As I have advised you, the declarations and acts of one or more of the conspirators, while engaged in carrying the object of the conspiracy into effect, are to be deemed the declarations or acts of all, and are binding upon all in their evidentiary effect. But not so after the conspiracy has come to an end. Several of the alleged conspirators have taken the stand and testified in their own behalf, namely Brenner, LaSalle, Stein and Smith. In their narratives of their dealings with war savings certificates and war savings certificate stamps, they have given evidence of their relations with other co-defendants. If such relations existed while the alleged conspiracy was still in operation, the testimony of such relations would be pertinent evidence against all the parties engaged in the alleged conspiracy, and should be so regarded by you; otherwise, not.

I will now call your attention to certain evidence that has been allowed to go to you, some of which I

will strike from the record as incompetent, and some of which it is proper to limit in its application.

First, with respect to the statement of Rossi to W. R. Bryon and others in the month of May, 1920, at Mr. Bryon's office, relative to his part in dealing with certain war savings certificates and war savings certificate stamps. These statements of Rossi,—you remember what they were and how they came to be made—the court now strikes from the case as incompetent as evidence, and I instruct you to disregard them wholly as evidence affecting either Rossi or any of the other defendants, for the reason that it appears from the uncontradicted testimony of Glover and Walters, who were Government detectives at the time—you will remember what it was—that Walters promised Rossi immunity from disclosure of his name in connection with the affair, and likewise from prosecution, on condition and in consideration that Rossi would give information leading to the detection of persons implicated in robbing the Scio bank. Rossi, it is said by these witnesses, gave such information as led to Peterson's arrest and the discovery of certain war savings certificates and stamps in his room. Having been promised this immunity, the reasonable inference would be that Rossi was influenced to make the statement through hope of escaping the disclosure of his connection, whatever it was, if any, with the stamp transactions. This although he was warned that whatever statement he might make

would be used against him, for he was called to make the statement by Government detectives after he had rendered the supposed service to other Government detectives which led to the detection and arrest of Peterson and the discovery of stamps in Peterson's room.

I instruct you, however, that the statement made by Rossi in giving evidence (before the grand jury) is not to be so disregarded by you. There is evidence tending to show that Rossi appeared before the grand jury voluntarily, and of his own accord, and, although warned that whatever statement he might make would be used in evidence against him, he, notwithstanding, gave such evidence without insisting upon his immunity. The evidence, therefore, of Mr. Young, the foreman of the grand jury, was competent and pertinent to prove the admissions of Rossi with reference to the stamp transactions, and you are to regard these admissions for whatever tendency they may have, if any, to show Rossi's connection with the alleged conspiracy. But I instruct you that these admissions, whatever they were, are not to be regarded as in any way affecting Peterson or any other of the defendants. This for the reason that such admissions, whatever they were, were made long after the alleged conspiracy had come to an end, and the parties, whoever they were, if any, had ceased co-operation for effecting the alleged common purpose. So you will lay these supposed admissions out of the case as in any way affecting any of the defendants except the defend-

ant Rossi. And so also Brenner's statements before the grand jury must be regarded in the same light.

It will be remembered also that Brenner, LaSalle and Stein were also called before Bryon, and each made a statement to him and others, regarding what transactions they had in dealing with war savings stamps. The statements of these defendants were made in May; that being concededly subsequent to the time when it is supposed that operations in pursuance of the alleged conspiracy had ceased. I therefore instruct you, and you are so to regard it, that the statement of Brenner, in whatever light it may be regarded, whether as admissions on his part or a statement of facts pertaining to transactions with war savings stamps, is not to be considered as affecting any of the other defendants in the case; that is to say, neither Peterson, Brenner, Stein or Smith. But as to LaSalle, his statement is competent and pertinent evidence to show, along with all the other testimony in the case, his relation, whatever it was, if any, with the alleged conspiracy. And so also of the statement of Stein made to Bryon, at or about the same time, I have but to repeat what I have previously said as to Brenner and LaSalle, it must not be regarded as affecting any of the other defendants, but such statement is pertinent and competent as affect Stein himself, and you are to consider it along with the other testimony in the case, in determining his alleged relations with the alleged conspiracy.

Now, the Government introduced in evidence a certain judgment of conviction on a plea of guilty against the defendant Peterson. This judgment is not to be regarded by you as evidence of the defendant's guilt in this case. It was only offered for the purpose of showing, as evidence bearing upon the question of intent on the part of Peterson, that a judgment was recovered in a case similar to this, and the judgment was offered for the purpose of being considered as evidence only as bearing upon the intent, or with what intent the defendant Peterson may have done anything that might implicate him in this case, whatever that was, as you will ascertain from the testimony.

So as to the testimony of Sitton, he was examined touching matters, not for the purpose of evidence in this case against the parties, but merely for the purpose, as I have explained in reference to this judgment, of determining with what intent Peterson may have acted, or any of the other defendants may have acted, in doing what they have been shown to have done, as you will ascertain, with reference to these war savings stamps.

Now, the elements of the offense of conspiracy are: First, it must be the act of two or more persons confederating and conspiring together. One person cannot commit the offense. Second, the purpose of the conspiracy must be to commit an offense against the United States or to defraud the United States. Third, one or more of the conspirators

must, after the conspiracy has been formed and during its existence, have done some act to effect the object of the conspiracy. And further, as I have said to you, the purpose of the conspiracy must be attended by a corrupt purpose; that is to say, in this case, with intent to violate sections 148, 151 and 154, or one or more of them, or with intent to defraud. These elements must be established beyond a reasonable doubt in order to convict. It is not essential that the alleged conspirators shall have accomplished their purpose. As applied here, it is not essential that the defendants, or any of them, shall have actually committed the offenses denounced by sections 148, 151 and 154 of the Criminal Code, heretofore defined to you, or shall have actually defrauded the United States; it is sufficient that it be shown, beyond a reasonable doubt, that the parties charged, or two or more of them, have entered into corrupt understanding, or agreement, or conspiracy to do these things, or any of them, and that one or more of the conspirators has, while the alleged conspiracy was in operation, done some act or acts to effectuate the purpose of the conspiracy.

Your inquiry will obviously center about the transactions among the parties with respect to the war savings certificate stamps that are in controversy here. You will inquire whether the stamps were stolen, and if so, whether by either of the defendants. And in this relation I may say to you that the possession of recently stolen property affords a strong inference that the property was

stolen by the person having it in his possession. You will inquire further whether the stamps have been altered by removing the stamps from certificates with the owner's name written thereon, or by erasure of the postoffice or registration number from the face of the stamp. And if you so find, you will then ascertain whether the alteration was made by one or more of the defendants while the alleged conspiracy was in operation, and if so, with what intent and purpose it was done. You will also inquire touching the persons into whose hands the altered stamps, if altered, passed; and if they passed, by sale or otherwise, into the hands of any of these defendants, you will ascertain the purpose of making the sales, and also of the persons, if they be defendants, in receiving and possessing themselves of the stamps, and whether with intent that they should be passed and used as true and genuine. If the motives of the defendants in handling and dealing with these stamps, whoever they were, if any, were corrupt, with the design or purpose either of transgressing the sections of the Penal Code heretofore designated, or any of them, or of defrauding the United States, knowing the stamps to have been altered, if you find that they were so altered, then such of the defendants as so dealt with such altered stamps, if two or more of them were implicated in a conspiracy to accomplish the purpose, would be amenable under the conspiracy statute under which the defendants are indicted.

The intent with which the acts were done in furtherance of the conspiracy, whatever they were, if

any, is an essential ingredient of the offense. This must be gathered from the declarations, acts and demeanor of the parties among themselves, and with respect to the subject matter of their transactions, and it involves the inquiry whether the defendants, whoever they were, if any, who dealt with these stamps, if altered, had knowledge that they were so altered or defaced, for without such knowledge they could not be charged with acting corruptly. So that, in order to ascertain with what intent, motive or purpose the parties dealt with these stamps, whoever they were, you will examine all the testimony that has been adduced here, both pron and con, as to the controversy, observing the limitations of which I have advised you touching the application of certain testimony to which I have especially called your attention. Thus in your inquiry you will trace the stamps, ascertain where they came from, what was done with them, and who dealt with them, and with what motives; and in doing this, you will take into account, along with the rest, the physical condition of the stamps.

Furthermore, the defendants must have had knowledge of the alteration or forgery of these obligations. Assuming that you find that these instruments were obligations of the United States and assuming that they had been in fact altered, these counterfeiting statutes being highly penal and being given life only where there is that intent, make it necessary that the proof show, either by circumstantial or direct evidence, the intent to defraud, making forging, or altering, and the

knowledge of such falseness, before the passing is unlawful. While it is true that the fact of the knowledge may be proven in a variety of ways, there should always be some evidence tending to show knowledge beyond that which results from mere proof that the forged or altered obligations were passed. This rule results from the nature of the transaction, because, as is very well known, forgeries or alterations may be so skillfully done that one may, naturally and innocently, as is sometimes the case, receive and pass such obligations in the whirl of business. In such a case intent and guilty knowledge within the meaning of these statutes would be absent, and if you should so find your verdict should be for the defendants not having such knowledge.

Certain witnesses have been called in the course of the trial to testify as to their own participation in this criminal transaction. While accomplices are competent witnesses, it is the duty of the court to caution you that their testimony must always be received with caution, and weighed and scrutinized with care. The jury should not rely upon it unsupported unless it produces in their minds the conviction of its truth.

While an offense may be established by circumstantial evidence, yet such evidence to warrant a conviction in a criminal case must be of such a character as to exclude every reasonable hypothesis but that of guilt of the offense imputed to the defendant. Or, in other words, the facts proved must all

be consistent with and point to his guilt only, and inconsistent with his innocence. The hypothesis of guilt should flow from the evidence proved and be consistent with that of guilt. If the evidence cannot be reconciled either with the theory of innocence or with guilt, the law requires that the defendant be given the benefit of the doubt, and that the theory of innocence be adopted.

Certain testimony has been offered here touching the reputation of some of the defendants and as to their good character. You should consider such evidence for whatever you may think it worth, together with all the other evidence in the case, in arriving at your verdict, and if you believe that his reputation prior to the finding of the indictment in this case for being a law-abiding citizen was good, you should weigh it along with the other evidence in the case and give it such effect and weight as you think it is entitled to, and if from all the evidence, including the evidence as to his reputation, you have a reasonable doubt concerning his guilt, you should acquit him.

Now, gentlemen of the jury, a reasonable doubt is not every captious or whimsical doubt that might be raised by a person to get rid of the question before him. It is a thing of substance, and it is such a doubt as would cause reasonable men to hesitate in their inquiry or as to whether they should act in the more important affairs of life. It is such a doubt, as applied to this case, as would cause you to hesitate and not act after an examination of all the

testimony, in this case with reference to the question of guilt or innocence. If you believe, however, from all the testimony, to a moral certainty, that the defendants have committed the offenses with which they are charged, then of course that obviates any cause for a reasonable doubt in the case; that is to say, in all of your investigations, before you can find the defendant guilty, you must be convinced to a moral certainty of his guilt, or you must be convinced beyond a reasonable doubt of his guilt.

Evidence of the general reputation of the accused for good character may of itself create a reasonable doubt of guilt, although without it no such doubt would exist. That evidence should be kept in view by you in all your deliberations, and is to be considered by you with all the other facts and circumstances in the case in determining the final issue of the guilt or innocence of the accused. Therefore, if you find that a reasonable doubt exists in your minds of the defendant's guilt because of the proof of such good character along with all the other facts and circumstances in the case, then it is your duty to find a verdict for the defendant.

Now, gentlemen of the jury, you are the sole judges of the effect of the testimony. The court gives you the law, and you take that from the court and apply it implicitly, but when you come to the testimony, that is your sole function, to determine what the effect of it is. A witness is presumed to speak the truth, but that presumption may

be overcome by the manner in which he testifies and by the character of his testimony, or by testimony affecting his character or his motives, or by contradictory evidence. A person found to be false in one particular is to be distrusted in all. And you may also observe the witness while upon the witness stand, and say whether or not he seems to be candid and open, or whether or not he seems to be withholding something; and from his demeanor you may determine as to his credibility and as to what extent he should be believed. And in this way, after determining the credibility of the witnesses, you may then say what your verdict should be upon the testimony in the case.

The defendants Peterson and Rossi have not taken the stand in their own defense. The fact, I will instruct you, that they did not so take the stand is not to be construed as in any way against them. The statute has provided that a person has a right to take the stand or not, and if he does not take the stand, the mere fact of his not taking the stand, shall not be construed as evidence against him.

Whatever the court may have said to you, gentlemen of the jury, or whatever the court may have said to counsel during the trial, in your hearing, from which you might infer that the court has an opinion in this case one way or the other, or upon any part of the testimony, you should disregard, because the sole function of determining what the

facts prove is within your hands and not the court's; and therefore I give you that particular instruction.

I will say further to you that certain of the defendants have taken the stand in their own behalf, and you should consider their testimony and the credibility thereof under the same rules and regulations as you would consider the testimony or credibility of any other witness in the case.

To which charge the defendant, at the time and in the presence and hearing of the jury, objected and excepted to so much of the court's said instruction given as follows:

MR. GOLDSTEIN: If the court please, on behalf of the defendant Rossi, and on his behalf only, I take exception to your Honor's instruction to the jury to consider the testimony of Rossi made before the grand jury. And instead I would ask that your Honor would instruct the jury to disregard anything that Mr. Rossi may have said before the grand jury, and failing in that instruction I ask your Honor to give this instruction: "If you believe that the statement or confession"——

COURT: You need not read that. You may hand it up. And you may take an exception to the court's not giving it.

MR. GOLDSTEIN: I want to read it in the record later, after the jury have gone.

COURT: You may hand that to the reporter.

MR. GOLDSTEIN: In addition, I also take exception to your Honor's instruction that a removal of a stamp from a certificate that has not been registered is a material alteration, bringing it within the purview of the three counterfeiting statutes.

COURT: You may have your exception.

* * *

MR. GOLDSTEIN: I also call your Honor's attention to an instruction that I think might be misunderstood. Your Honor stated at the outset that these defendants are not on trial for the substantive offenses themselves; that is, they are not on trial for receiving altered obligations or having in possession altered obligations, or passing altered obligations, but they are charged with conspiring to have these things and to do those things; but that they may consider the admissions and the demeanor of the defendants. I think that is a little confusing, in that it is my contention that the proof of a conspiracy cannot be predicated upon admissions of the defendants themselves as to any part in their transactions; that the proof of conspiracy must be established beyond an admission.

COURT: Well, that will be overruled.

* * *

MR. GOLDSTEIN: I also take exception, if your Honor please, on behalf of all the defendants, to so much of the instruction that your Honor has given as are inconsistent and contradictory to the requested instructions and supplementary requested instructions that I have handed to your Honor.

I also ask an exception to your Honor's refusal to give the requested instructions.

Exceptions allowed.

Whereupon, within the time limited by the rule of the court so to do, the defendant, in writing, requested the court to give the jury the following instructions:

I also call your Honor's attention to an instruction that I think might be misunderstood. Your Honor stated at the outset that these defendants are not on trial for the substantive offenses themselves. That is, that they are not on trial for receiving altered obligations or having in possession altered obligations, or passing altered obligations, but they are charged with conspiring to have these things and to do those things; but that they may consider the admissions and the demeanor of the defendants. I think that is a little confusing, in that it is my contention that the proof of a conspiracy cannot be predicated upon admissions of the defendants themselves as to any part in their transaction; that the proof of conspiracy must be established beyond an admission.

* * *

If you believe that the confession made by Mr. Rossi to Mr. Young, foreman of the grand jury, was traceable to the hope inspired by the assurances made by Mr. Walters and Mr. Glover in the first instance, and that Mr. Rossi at the time was relying

upon such assurances when he made the confession to Mr. Young, then such confession is inadmissible and you should disregard it. It is not material whether Mr. Young knew that Mr. Glover had inspired a hope in the mind of Mr. Rossi provided there was a causal connection between the hope aroused and the confession. The fact that the confession was not made to the officer arousing that hope is immaterial. When an improper influence has been exercised it becomes the duty of the Government to show that it has been removed before this subsequent confession can be held admissible.

* * *

The basis of the jurisdiction of the United States over these offenses is that it involves an obligation or other security of the United States which is alleged to have been altered, forged, or counterfeited. If the instrument alleged to have been so altered, forged, or counterfeited is not an obligation of the United States, then there has been no violation of these counterfeiting statutes. Before you can find, therefore, that the defendants conspired to violate any of these statutes you must first of all determine to your satisfaction and beyond a reasonable doubt that the scheme alleged to have been devised by the defendants was one that had in contemplation the dealing in altered, forged, or counterfeited obligations of the United States. If the conspiracy did not have any such object in contemplation, then the scheme could not possibly have resulted in a violation of any of these statutes. In

other words, if the defendants conspired to commit some offense that is not denounced by these specific statutes, or any of them, to-wit, sections 148, 151 and 154, then you cannot find any of these defendants guilty on this charge, and your verdict would under those circumstances have to be that of not guilty, so far as this particular charge is concerned.

* * *

When and under what circumstances can the instruments alleged in the indictment to have been the subject of the alteration be considered as the obligations of the United States? I instruct you that a United States war savings stamp becomes an obligation of the United States only when it has been affixed to a United States war savings certificate and the name of the owner has been written upon that certificate. It is only when such a certificate is so made up and completed that it becomes an obligation of the United States within the meaning of the counterfeiting statutes herein involved.

* * *

If you should find, therefore, after a review of all the testimony in this case, that the prosecution has not convinced you beyond a reasonable doubt that the object of the conspiracy was to alter or forge such obligations of the United States, as I have defined them, then it would be your duty to return a verdict of not guilty as to such defendants you find had not so conspired. In other words, if

certain of the defendants entered into a conspiracy, assuming that there was a conspiracy, merely to buy, receive, possess, or sell loose war savings stamps, then they could not be said to be guilty of this offense, as such war savings stamps, considered separately, are not obligations of the United States.

* * *

It is further charged in the indictment that the defendants conspired to forge and alter obligations of the United States by removing a certain serial or identification number from the face of the stamps. Upon that point I instruct you that it is not an alteration or forgery of a United States war savings certificate, assuming that it was fully and completely made up so as to constitute an obligation of the United States, to erase or remove the serial number therefrom, as such serial number is not a material element of the obligation. The obligation is just as potent in the hands of the holder without as with the serial number. It is only when the certificate has been duly registered that the removal of the registration number therefrom would constitute a forgery. It is not charged in the indictment, however, that the conspiracy included the scheme of altering stamps or certificates that had been registered. That being the case I instruct you that under this indictment there has been no proof that obligations of the United States had been altered by the removal of the registration number therefrom.

* * *

I also instruct you that it is unfair and improper to consider anything you may have heard or read concerning this case outside this court room to influence you in arriving at your verdict. Your verdict should depend upon the sworn testimony that you have heard here, and upon that testimony only. It appears that a number of articles were written concerning this case which might possibly have a tendency to detract from the testimony as here given under oath. If you have heard or read anything about this case outside this courtroom it is your duty under your oath to disregard it entirely. It is not only unfair to the defendants that you should entertain any prejudice against them for something that you may have heard or read outside this courtroom, but it is likewise a contempt of court to publish such matters of a pending trial. I therefore remind you of your duty under your oath and appeal to your conscience to consider only the evidence given in this case, and none other. If, therefore, you honestly feel that the evidence as presented in this case is insufficient to convince you beyond a reasonable doubt of the guilt of the defendants, then it is your duty to return a verdict of not guilty, notwithstanding the fact that if you considered the statements in the newspapers your decision would have been otherwise. I also instruct you that your verdict must be based upon the guilt or innocence of these defendants on this charge, and none other, no matter what your opinion may be concerning their guilt upon any other charge or offense. If, there-

fore, you honestly feel that the evidence as given in this case is insufficient to convince you beyond a reasonable doubt of the guilt of the defendants in conspiring to violate the counterfeiting statutes, then it is your duty to return a verdict of not guilty, notwithstanding you might believe them guilty of some other offenses.

Except as the said instructions may have been incorporated in the general charge, the court refused to give said instructions to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception by the court as to each and every one of said requested instructions so refused to be given.

Thereupon the jury retired, and upon returing into court announced that it desired further instructions, whereupon the court further charged the jury as follows:

Now, gentlemen of the jury, the first question that you propound is the following: Does a stamp simply by being removed from a certificate, said certificate not being registered, become an altered stamp?

To that I answer, that if the certificate has a stamp attached and the name of the party written upon the certificate, and the stamp thereafter has been removed with intent to defraud, then the

defendant would be guilty whether the certificate or stamp was registered or not.

* * *

COURT: The next question you ask is this: If defendants thought at the time that they were handling stolen stamps, but did not know they were altered registered stamps, could we find them guilty on this indictment?

My answer to that is that if the defendants were handling these stamps knowing them to be stolen, and they handled them with intent to defraud the United States, then they would be within the purport of this indictment.

Thereupon the defendant in the presence and hearing of the jury objected and excepted to each of said additional instructions and the following proceedings were thereupon had in connection therewith:

MR. GOLDSTEIN: If the court please, on behalf of the defendants I represent I take exception to your Honor's instruction holding that the mere removal of a stamp from a certificate that had not been registered with the Government—the stamp itself being the unit of value, the certificates being meaningless unless it together had been registered so as to constitute it an obligation of the United States—would be an alteration within the meaning of the counterfeiting statutes. In other words, the contention is that Congress alone can make it a crime to remove stamps from certificates, and that this merely being a regulation of the Treasury De-

partment unsupported by any congressional action, it could not diminish or impair the value of the stamp, which is itself the unit of value. Furthermore, I would ask that your Honor instruct the jury with respect to that particular point.

COURT: That is the same question you raised last evening.

MR. GOLDSTEIN: It is, but with this particular condition: Now, in view of what your Honor instructed the jury, that unless the jury can find that the defendants in the handling of the loose stamps did at that time know that the stamps had at one time or another been a part of a completed obligation, that is, that the stamps at one time or another had been fully attached to a certificate and that at one time or another, the certificate had endorsed thereon the name of the proper owner, and did it with the intent to defraud, the mere handling of loose stamps in itself would not be sufficient.

COURT: I have instructed the jury fully about that, and I don't think it necessary to repeat it.

MR. GOLDSTEIN: I will ask that the court instruct the jury that it is not within the meaning of the indictment that stamps that had been stolen, if the defendants knew that they had been stolen, come within the condemnation of the indictment; that they must in addition to that know that the stamps had at one time been part of the altered obligation, and that they did it with the intent of circulating altered obligations, and with the intent of defrauding the Government, and with the intent of carrying out the purposes of the conspiracy. I will ask that instruction, and except to the refusal to give it.

COURT: You may have your exception.

It is hereby certified that the instructions heretofore set out herein as having been given by the court to the jury are all of the instructions given by the court to the jury .

And thereupon the jury rendered a verdict of guilty as charged in the indictment.

And thereafter the defendant, within the time allowed so to do, moved the court for a new trial of said cause, which said motion for a new trial, omitting the title thereto, is as follows:

Comes now the defendant in the above entitled case, by Barnett H. Goldstein, his attorney, and moves the court to set aside the verdict of the jury rendered herein and to grant a new trial, for the following reasons and upon the following grounds:

I.

That the court erred in overruling the defendant's demurrer to the indictment.

II.

That the record fails to show that the defendant has pleaded to this indictment as required by law and therefore no issue being had, there was nothing for the jury to try.

III.

That the defendant was prejudiced at the outset of his trial and during the course of his trial by articles appearing in newspapers then and there published and generally circulated in the City of Portland, Oregon, where said cause was being tried, which said articles purporting to discuss and comment upon this case were of such a nature as to arouse public prejudice against this defendant and were thereby calculated to prejudice the jury against him; that true and correct copies of such newspaper articles are hereto attached and made a part of the affidavit of Barnett H. Goldstein, hereto annexed and made a part hereof.

IV.

That the defendant was prejudiced by remarks of the court made during the course of the trial, as follows:

(a) During the examination of Julius Hearn, a witness for the Government, when objection was interposed to the admissibility of statements made subsequent to the termination of the conspiracy, the court made the following remarks:

“As to the objection that there has been no conspiracy proven here, you do not care to force the court to recount the testimony about that. I will overrule the objection.”

(b) During the examination of Julius Herns, a witness for the Government, when questioned as to the manner of eliciting information from him by government officers concerning which he testified that before making any statements he was told by John Price, connected with the department of justice, that he had better make a clean breast of it or go to jail (308), the court at the conclusion of his testimony asked the following questions:

COURT: Have you told the truth about that?

A. Yes, sir.

COURT: And nothing else?

A. Nothing else.

COURT: I think that is enough.

(c) During the examination of William Glover, a witness for the defendant and a former United States secret service operative, when questioned by the attorney for the defendant, testified as follows:

Q. Did you come to me and ask me to put you on the stand?

A. I did, sir, night before last.

Q. Why did you ask that?

A. When I saw—the reason for asking you to put me on the stand—I saw that Mr. Veatch was

not going to put me on the stand so I could explain away some of this newspaper notoriety that has been filtering here for the last six months; so I came to you and requested you to give me a chance to get the truth before this court and my friends here.

Q. This was a personal request of me as a friend of yours?

A. Yes, absolutely.

Whereupon the court intervened as follows:

COURT: Who is your friend?

A. Well, I have friends all over the coast, your Honor.

COURT: I thought you meant Rossi.

(d) During the examination of William Glover, a witness for the defendant and a former United States secret service operative, when cross-examined by the Assistant United States Attorney, he testified as follows:

A. This is the way the secret service operates, which I testified to yesterday—if a man comes into your office that is a crook or has been, and he says that a man so and so is, he believes,—is going into counterfeiting, and has asked him to go into counterfeiting, we very oftentimes hire him as an informant, with the distinct understanding that he is to get what information he can, but under no circumstances is he to manufacture any money or violate the statute, because he would be just as liable as the men that made the money themselves.

Whereupon the court intervened as follows:

COURT: In other words, you make a stool-pigeon out of him?

A. Yes, sir.

COURT: Did you attempt to do that with Rossi?

A. Well, that was part of the information, your Honor, that he was to furnish, that Mr. Walters made a condition as to keeping him under cover.

COURT: Was Rossi to act as stool-pigeon in order to pick up information for you?

A. That is practically the matter of the fact, your Honor.

(e) During the examination of William Glover, a witness for the defendant and a former United States secret service operative, the court questioned him as follows:

Q. I am asking you whether or not Rossi told you that he had sold or delivered any of these stamps to other parties?

A. No, sir.

Q. He left the impression with you that he was perfectly innocent himself?

A. Yes, sir. He simply mentioned the stamps that he had—the Swede Peterson stamps, said that he didn't—he told me that he didn't know that they were crooked.

Q. So that was not telling you the whole story?

A. Well, I imagine not from what later developed, your Honor. No question about that.

Q. That is all.

V.

That the court erred in the admission of the following evidence to which exception was duly made by the defendant:

(a) In permitting Miss Daisy Buckner to testify as to the registry of war savings certificate stamps on the ground that there was no charge in the indictment that the conspiracy contemplated the possession or sale of stamps that had been registered.

(b) In permitting William Bryon to testify as to the admission made by the defendant upon the ground that such statements had been induced by the promise of immunity theretofore granted to said defendant.

(c) In permitting William Bryon to testify orally as to admissions made by the defendant, which admissions had theretofore been reduced to writing and his written transcript was in the possession or under the control of the witness, on the ground that the written transcript was the best evidence.

(d) In permitting William Hyde to testify as to the condition of certain stamps that were in the

possession of Mr. Randolph, upon the ground that no proof had been offered tending to show those stamps were the identical stamps, or in anywise involved in the specific stamp transactions in the indictment.

(e) In permitting P.A. Young to testify as to admissions made by the defendant from notes that were not taken by him, on the ground that the best evidence was the testimony of the man who made the notes.

(f) In permitting T. M. Word to testify from a certain report he made without permitting counsel for the defendant to examine such report, upon the ground that the defendant was entitled to know and cross-examine him as to the basis for making such report.

(g) In permitting George H. Marsh to testify in the Government in chief case as to a former conviction of one of the defendants named Peterson, on the ground that such evidence was proof of another crime and thereby tended to prejudice all defendants jointly indicted and tried with Peterson.

(h) In permitting J. M. Riley to testify and through him to introduce certain stamps that were handed to him by the United States attorney in an effort to connect such stamps with those Mr. Randolph had received from one of the defendants and which, in turn, he testified had been sent by him to a Mr. McCann in San Francisco, on the ground that

there had been no evidence offered to connect the stamps that Mr. McCann had with those that subsequently came into the possession of the United States attorney's office.

(i) In permitting John Veatch to make statements not responsive to the questions propounded to him.

VI.

That the court erred in excluding the following evidence offered on behalf of the defendant, to which exception was duly taken:

(a) In refusing P. A. Young permission to state that Mr. Glover had testified before a grand jury that he had promised immunity to Rossi for the information he gave.

(b) In refusing W. A. Glover permission to state what the defendant told him concerning a conversation had with Mr. Bryon regarding the matter of immunity.

VII.

That the court erred in denying the motion of the defendant to strike out all testimony of the Government witnesses as to admissions made to them by the defendants subsequent to the promise of immunity theretofore accorded to him by Mr. Glover and Mr. Walters, secret service operatives, in charge of this investigation.

VIII.

That at the close of all the evidence in the case and after the court had ruled that the testimony of William Bryon should be stricken out on the ground that the admissions made by the defendant had been induced by the promise of immunity theretofore given to him, the court erred in failing to give a mistrial on the ground of the highly prejudicial testimony of Mr. Bryon already before the jury.

IX.

That the court erred in holding that the admissions of the defendant made before the grand jury were not induced or encouraged by the promise of immunity theretofore granted him.

X.

That the court erred in refusing to direct a verdict of not guilty at the close of the evidence.

XI.

That the court erred in instructing the jury as follows:

(a) In giving the following instruction:

The only offense with which the defendants are charged under the indictment is that of conspiracy. That is the only cause on trial here, and you should confine your inquiry to that

cause alone, and unless the defendants, or two or more of them, are guilty of that particular offense, they must be acquitted.

You are not to understand, however, that you are not to take into consideration what the defendants, or any of them, have done, according as the evidence may tend to show, conducing to their incuplation. You should examine very carefully all the competent evidence offered with respect to the declarations and acts and demeanor of all the defendants, as it relates to these war savings certificates and war savings certificate stamps, in order to ascertain, if possible, how they came into the possession of the defendants, or any of them, if they ever had such possession; as to whether they were falsely made or altered by them, or any of them, if at all; as to whether they were sold or transferred, or received by them, or any of them; and as to whether they, or any of them, were uttered or passed as true and genuine; all for the purpose of determining whether the defendants, or any two or more of them, conspired together, as alleged, to commit these offenses, or any of them, or to defraud the United States.

and in not explaining such instruction as requested by the defendant:

MR. GOLDSTEIN: I also call your Honor's attention to an instruction that I think might be misunderstood. Your Honor stated at the out-

set that these defendants are not on trial for the substantive offenses themselves; that is, they are not on trial for receiving altered obligations or having in possession altered obligations, or passing altered obligations, but they are charged with conspiring to have these things and to do those things; but that they may consider the admissions and the demeanor of the defendants. I think that is a little confusing, in that it is my contention that the proof of a conspiracy cannot be predicated upon admissions of the defendants themselves as to any part in their transaction; that the proof of conspiracy must be established beyond an admission.

(b) In giving the following instruction:

I further instruct you that a removal of the stamps from the certificate, if done with intent to defraud, would be tantamount to an alteration of a Government obligation, and would, in effect, render it a falsely made certificate or obligation within the purview of section 148 of the Penal Code, and would constitute a violation thereof.

(c) In giving the following instruction on the ground that there was no charge in the indictment that any of these stamps had been registered:

So if one should erase the registration number from the face of the stamp, or the owner's name from the certificate, with the intent to defraud, he would be guilty of an alteration of such certificate, and would commit the offense denounced by section 148.

(d) In giving the following instruction:

I instruct you, however, that the statement made by Rossi in giving evidence (before the grand jury) is not to be so disregarded by you. There is evidence tending to show that Rossi appeared before the grand jury voluntarily, and of his own accord, and, although warned that whatever statement he might make would be used in evidence against him, he, notwithstanding, gave such evidence without insisting upon his immunity. The evidence, therefore, of Mr. Young, the foreman of the grand jury, was competent and pertinent to prove the admissions of Rossi with reference to the stamp transaction, and you are to regard these admissions for whatever tendency they may have, if any, to show Rossi's connection with the alleged conspiracy.

(e) In giving the following instruction, on the ground that there was no evidence in the case that any of these stamps were stolen by any of the defendants:

You will inquire whether the stamps were stolen, and if so, whether by either of the defendants. And in this relation I may say to you that the possession of recently stolen property affords a strong inference that the property was stolen by the person having it in his possession.

(f) In giving the following instruction:

Now, gentlemen of the jury, the first question that you propound is the following: Does a stamp simply by being removed from a certificate, said certificate not being registered, become an altered stamp?

To that answer, that if the certificate has a stamp attached and the name of the party written upon the certificate, and the stamp thereafter has been removed with intent to defraud, then the defendant would be guilty whether the certificate or stamp was registered or not.

(g) In giving the following instruction, on the ground that there was no evidence in this case that any of these stamps were stolen by any of the defendants and no charge in the indictment that the defendants conspired to steal altered stamps, or have stolen altered stamps in their possession, knowing them to be stolen:

The next question you ask is this: If defendants thought at the time that they were handling stolen stamps, but did not know they were altered registered stamps, could we find them guilty on this indictment?

My answer to that is, that if the defendants were handling these stamps knowing them to be stolen, and they handled them with intent to defraud the United States, then they would be within the purport of this indictment.

XII.

That the court erred in failing and refusing to give the instructions requested by the defendant.

XIII.

That the verdict is contrary to the law of the case.

XIV.

That the verdict is not supported by any evidence in the case.

(Signed) BARNETT H. GOLDSTEIN,
Attorney for the Defendant.

STATE OF OREGON,)
County of Multnomah.){ss.

I, Barnett H. Goldstein, attorney for the above named defendant, do hereby certify that in my opinion the above motion is well founded in law.

(Signed) BARNETT H. GOLDSTEIN,
Attorney for the Defendant.

AFFIDAVIT.

STATE OF OREGON,)
County of Multnomah. }ss.

I. Barnett H. Goldstein, being first duly sworn, depose and say that I am a practicing attorney in the State of Oregon, residing and maintaining an office at Portland, Oregon; that I am the attorney for the above named defendant and was his attorney prior to and throughout his trial herein; that in preparing for trial and in the course of said trial, my attention was called to articles appearing in newspapers being published in the City of Portland relative to this defendant and his case, and I thereupon read such articles and do hereby depose that the documents hereto attached are true and correct copies of articles appearing in the Portland News, The Morning Oregonian and the Evening Telegram, said articles appearing on the times and on the dates stated.

That the article marked "Exhibit A" appeared in the Portland News a few days prior to October 26, 1920, the date when the trial herein began; that the article marked "Exhibit B" appeared in The Morning Oregonian on October 26, 1920, the morning of said trial; that the article marked "Exhibit C" appeared in the Evening Telegram on October 26, 1920, the day of said trial; that the article marked "Exhibit D" appeared in the Portland News on or about October 28, 1920, and during the course of said trial; that the article marked "Exhibit E" appeared in the Evening Telegram on or about October 28, 1920, and during the course of said trial; that the article marked "Exhibit F" appeared in the Evening Telegram on or about October 28, 1920, and during the course of said trial; that the article

marked "Exhibit G" appeared in the Portland News on or about October 29, 1920, and during the course of said trial; that the article marked "Exhibit H" appeared in The Morning Oregonian on or about November 9, 1920, and during the course of said trial.

That the said aforementioned publications, to-wit: The Morning Oregonian, Portland News, and the Evening Telegram are each newspapers published daily and in general circulation throughout the said City of Portland, Oregon, where the trial of this defendant was then and there being held.

(Signed) Barnett H. Goldstein.

Subscribed and sworn to before me this——day
of January, 1921.

.....
Notary Public for Oregon.
My commission expires.....

EXHIBIT A.

From News Item Appearing in Portland News.

Implication of the United States secret service in the illegal sale of war savings stamps obtained by the robbery of a number of country banks is expected when the trial of six men charged with altering and disposing of the stamps begins in Federal Court Wednesday.

The stamps, together with some liberty bonds, were stolen from banks in Oregon and Washington last winter. The total value of the loot was in the neighborhood of \$35,000.

The bank robbers disposed of the Government paper at less than one-fifth of its face value by transferring it to "fences," who, in turn, sold it to others. One of the men who thus became involved in the alleged conspiracy is City Detective Bob LaSalle.

Detective Admits Part in Affair.

LaSalle admits selling several hundred dollars worth of the stamps, but he says he had no knowledge of the robberies and it is expected that his attorneys will set up the claim that secret service agents told LaSalle the stamps could be legally sold.

Dave Stein, a north end pawnbroker; William Bremmer, a clothing merchant, and Angelo Rossi, another north end secondhand dealer, are facing trial on the charge of attempting to defraud by the alteration and sale of war savings stamps. W. E. Smith, a former employee of Rossi, is also one of the alleged conspirators, as is Fred Peterson, the man who is suspected of having done the actual safe cracking.

EXHIBIT B.

**From News Item Appearing in the Oregonian
October 26, 1920.**

The trial of six Portland men, including former detective on the city police force, for alleged trafficking in registered war savings stamps, part of the loot taken from the Scio, Or., State bank when it was robbed on March 3 last, will be started in the United States district court here tomorrow. Interest in the trial has been increased by rumors that other prominent persons in Portland may be connected with the operations of an alleged ring dealing in war savings stamps which are said to have been altered.

The six defendants are Bob LaSalle, ex-detective on the city police force; Fred Peterson, alleged robber, who has served three terms in penitentiaries; Dave Stein, local pawnbroker; William Bremner, owner of a clothing store; Angelo H. Rossi, pawnbroker and alleged to be a fence for thieves, and W. E. Smith, a watchmaker, who once worked for Rossi.

Stamps Registered at Scio.

The tale of the robbery of the Scio bank of \$15,000 worth of war savings stamps as well as liberty bonds, money and other valuables, is one of clever operatives, for the guilt of the actual crime has never been definitely placed. The bank purchased the stamps from the postoffice in Scio and took the precaution to have them registered, the Scio number being 50819, which was printed across the face of each stamp. The robbery occurred on March 3, and just a week later Fred Peterson was

caught in Portland with a quantity of war savings stamps on him, some of which, according to federal operatives, clearly showed traces of alterations by the use of some acid, the odor of which was easily noticeable and yet clung to those stamps held as evidence by the United States attorney in his vaults yesterday, after more than seven months.

Peterson's activities led to Rossi, who had long been watched as a supposed receiver of stolen goods, said detectives, and later another lead showed that Rossi was supposed to have sent a quantity of the stamps to San Francisco. The stamps were placed on the market at bargain prices, though they were worth their face value in all postoffices, and the ring saw an opportunity to make big profits, stated the complaint. Brenner bought and sold to LaSalle at a profit, and LaSalle was said to have sold to George N. Randolph.

Poor Specimens Reported.

It was stated that in the Randolph lot some poor specimens were found, some that were partly useable, and he asked LaSalle for his money back. LaSalle then came back on Brenner and Brenner on Rossi, who could not make good. This was said to have been the chain of events that set off the mine, for the partners fell out and the federal officers came in and were able to get some of them, who were angered, to talk enough to trace the operations of the gang. Rossi was said to have also sold stamps to W. E. Smith, who was said to have resold to Julius Hern.

Dave Stein was said to have made a sale to Philip Tobin, a tailor, who worked for him, and Tobin is one of the men who was reported to have had the bravado to redeem the stamps from the Government after the postoffice department already had paid for them once.

EXHIBIT C.

News Item Appearing in the Telegram.

FORMER CITY DETECTIVE ONE OF DEFENDANTS; ALLEGED ROBBER TO BE BROUGHT FROM JAIL TO TESTIFY.

Six men, one of them a former detective on the Portland police force, another now serving time in the county jail for robbery, went on trial this afternoon before Federal Judge Wolverton on the charge of attempting to defraud the Government by the sale of altered war savings stamps.

The stamps involved, officials say, are believed to have been included in loot taken from the Scio, Or., State bank.

May Involve Others.

The six defendants are: Bob LaSalle, ex-detective; Fred Robertson (Swede Whitey), alleged robber, who will be brought from his cell in the county jail to testify; Dave Stein, local pawnbroker; William Brenner, owner of a clothing store; Angelo H. Rossi, jeweler and pawnbroker, and W. E. Smith, a watchmaker who once worked for Rossi.

Special interest is attached to the case in view of the fact that other Portland business men are said to be involved in the operations of the alleged conspirators in disposing of the stamps.

EXHIBIT D.

From News Item Appearing in the Portland News.

SECRET SERVICE HEAD MAY BE INVOLVED.

During the progress of the trial Thursday William Glover, former head of the U. S. secret service here, held frequent whispered conferences with Barnett H. Goldstein, one of the six attorneys for the defendants.

It was charged by Assistant U. S. Attorney Veatch that Goldstein is secretly representing Glover in this trial, it being intimated by Veatch that Glover himself may be on trial at some time in the future.

EXHIBIT E.

From News Item Appearing in the Telegram.

William Glover, former secret service operative in charge of the Portland office, was not called as a witness by the Government because he had been "running around talking to attorneys for the defense," according to his testimony as brought out by John Veatch, prosecuting attorney, in cross-examination of the Government's case against six

Portland men charged with conspiracy in dealing in altered war savings stamps.

Yesterday Glover testified he asked his friend, Barnett H. Goldstein, attorney for the defense, to put him on the stand in order that he might clear up recent newspaper notoriety before his friends.

"What friends do you refer to?" asked Judge Wolverton.

"Your Honor, I have many friends up and down the coast," he replied.

"Oh, I thought you alluded to Rossi," said the judge.

EXHIBIT F.

From News Item Appearing in the Telegram.

Branded by his own admissions a traitor to his Government, William Glover, recently deposed head of the local branch of the United States secret service, was submitted to a grilling cross-examination in the federal court Saturday, when he took the stand at his own request as a witness for the defense.

One of the startling disclosures made in the testimony of Glover was that he had been removed from the secret service after a letter had been sent by a federal grand jury to his chief at Washington.

This letter charged that Glover and an assistant planned with Angelo Rossi, a "stool-pigeon", impressed into their scheme, to "plant" stolen war stamps in the room of Fred Peterson, ex-convict.

Peterson, on account of his previous record, being convinced he would be convicted before a jury, it is said, pleaded guilty to the possession of the stamps. Peterson is now serving a sentence in the county jail as the result.

EXHIBIT G.

From News Item Appearing in the Portland News.

New developments growing out of the war savings stamp scandal in the federal court trial now in progress today here were:

That \$5000 worth of the stamps disappeared after they had passed through the hands of three detectives who made an arrest of a petty criminal in whose possession was found stamps to the value of something like \$20,000, part of the loot from the bank of Asotin, Wash., robbed by yeggs.

That an attempt was made to bribe City Detective Tom Coleman.

That the total amount involved in the robbery of six or seven small country banks in the Northwest within a space of a few months was close to \$200,000.

That the recent robbery of the Scottsburg post-office and general store was the work of a yegg gang headed by Frank Wagner, notorious safe cracker, is the opinion of Pinkerton operatives who have been working on the case.

Wagner, who was serving a 40-year sentence at Salem for the blowing of a safe at Astoria, made his escape a few weeks ago.

Fences Were to Sell Plunder.

The theory that Wagner planned and carried through the coup at Scottsburg, where \$20,000 in cash was the principal loot, was formulated when the Pinkerton men learned that Ann Bryant, "affinity" of Wagner, has been making her home within six miles of Scottsburg during the past few months.

All of this plunder is supposed to have been brought by the bank robber gang to Portland to be disposed of through Portland "fences."

Angelo Rossi, one of the six defendants in the war savings stamp conspiracy case now being prosecuted in the federal court, is suspected of having been the principal distributing agent and W. E. Smith, William Brenner, David Stein and Detective Bob LaSalle, co-defendants with Rossi, are presumed to have been sub-agents. Besides these, the United States department of justice believes that many other Portland men are involved.

"The worst gang of yeggs that has ever operated on the Pacific coast," said Special Agent William Bryon, of the U. S. department of justice, "are mixed up in this conspiracy."

Find Bribe on His Front Porch.

That it would have been impossible for bank robbers to put \$20,000 worth of Government securities on the market without the co-operation of Government sleuths and of some local law enforcement agencies is the opinion of Bryon.

EXHIBIT H.

From News Item Appearing in the Oregonian.

The fate of Robert LaSalle, former inspector of the Portland police department, Angelo Rossi, Dave Stein and William Brenner, local merchants; W. E. Smith, watchmaker, and Fred Peterson, ex-convict, who is now doing a term of one year in the Multnomah county jail, all of whom are charged with conspiracy in trafficking in altered United States war savings stamps, rested with the jury in the federal district court last night. * * *

According to the federal operatives and the United States attorney's office, this case is intended to open a thorough clean-up of activities of an alleged ring dealing in stolen Government securities in this section of the country, often making honest men their dupes in the disposal of the paper.

In the federal officials' estimation it is this clique that has made it possible for robbers to break into many banks in this state in the last few years, always finding ready sale for the product of their robberies, and few of the Government stamps and liberty bonds have been traced. The amount lost by three robberies runs into many thousands of dollars, and the Government is determined to run down the criminals.

Whereupon the said motion for a new trial was then argued before the court, and was on the 17th day of January, 1921, overruled and denied by the court, to which ruling of the court the defendant then and there duly excepted.

Thereupon the defendant moved the court to arrest judgment upon the said verdict for the following reasons:

1. That the said indictment is duplicitous in that two offenses are charged or attempted to be charged therein;

2. That the said indictment does not state facts sufficient to constitute an offense or a crime against the laws of the United States;

3. That no issue has been joined herein in that the defendant has never pleaded to this indictment; and that because of which said errors in the record herein, no lawful judgment can be rendered by the court upon the record in this case.

Whereupon the said motion in arrest of judgment was then argued before the court, and was on the 17th day of January, 1921, overruled and denied by the court, to which ruling of the court the defendant then and there duly excepted.

AND, NOW, because all the foregoing matters and things are not of record in this case, I, Charles E. Wolverton, the judge who tried the above entitled cause in the above entitled court, do hereby certify that the foregoing bill of exceptions correctly states all the proceedings had before me on the trial of said cause so far as they pertain to these particular exceptions, and truly states all the rulings of the Court upon the questions of law presented; and that the exceptions taken by defendant's attorney were duly taken and allowed; that said bill of exceptions was prepared and submitted within the time allowed by the order of the Court, and is now signed, sealed and settled as and for the bill of exceptions in said cause, and the same is hereby ordered to be made a part of the record in said cause.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of June, 1921.

CHAS. E. WOLVERTON,
United States District Judge.

Due, timely and legal service by copy hereof admitted at Portland, Oregon, this 13th day of May, 1921.

JOHN C. VEATCH,
Assistant U. S. Attorney.

Filed June 1, 1921.

G. H. MARSH, Clerk.

PETITION FOR WRIT OF ERROR

**In the District Court of the United States for the
District of Oregon.**

United States of America, Plaintiff,

VS.

Angelo H. Rossi, Defendant.

AND AFTERWARDS, to wit, on the 10 day of May, 1921, there was duly FILED in said Court, a Petition for Writ of Error, in words and figures as follows, to wit:

Your petitioner Angelo H. Rossi, defendant in the above entitled cause now comes and brings this, his petition as plaintiff in error, for a writ of error to the District Court of the United States for the District of Oregon, and thereupon your petitioner shows:

That on the 26th day of January, 1921, there was rendered and entered in the above entitled cause a judgment in and by said District Court of the United States for the District of Oregon, wherein and whereby your petitioner was sentenced and ad-

judged to be imprisoned in the United States penitentiary at McNeill's Island for the term of eighteen months.

And your petitioner further shows that he is advised by counsel that there are manifest errors in the records and proceedings at and in said cause in the rendition of said judgment and sentence, to the great damage of your petitioner, all of which errors will be made to appear by examination of the said record and more particularly by an examination of the bill of exceptions by your petitioner tendered and filed herein and in the assignments of error filed and tendered herewith.

To the end, therefore, that the said judgment, sentence and proceedings may be reversed by the United States Circuit Court of Appeals, of the Ninth Circuit, your petitioner prays that a writ of error may be issued, directed therefrom to the said District Court of the United States for the District of Oregon, returnable according to law, and the practice of this Court, and that there may be directed to be returned pursuant thereto a true copy of the record, bill of exceptions, assignments of error and all proceedings had in said cause; that the same may be removed into the United States Circuit Court of Appeals for the Ninth Circuit to the end that the errors, if any have happened, may be fully corrected, and full and speedy justice done your petitioner.

And your petitioner now makes his assignments of error filed herewith upon which he will rely, and

which will be made to appear by the return of said record in obedience to said writ.

WHEREFORE, your petitioner prays the issuance of a writ as hereinbefore prayed for, and prays that his assignments of error, filed herewith may be considered as his assignments of error upon the writ, and that the judgment rendered in this cause may be reversed and held for naught and said cause remanded for further proceedings, and also that an order be made fixing the amount of security which the said petitioner shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this Court against the said petitioner be suspended and stayed until the determination of the said writ of error in the said Circuit Court of Appeals.

BARNETT H. GOLDSTEIN,
Attorney for Petitioner.

STATE OF OREGON,	}
	{ss.
County of Multnomah.	}

Due, timely and legal service by copy, admitted at Portland, Oregon, this 10th day of May, 1921.

JOHN C. VEATCH,
Assistant U. S. Attorney.

Filed May 10, 1921.

G. H. MARSH, Clerk.

AND AFTERWARDS, to wit, on the 10 day of May, 1921, there was FILED in said Court, Assignment of Errors in words and figures as follows, to wit:

ASSIGNMENT OF ERRORS.

**In the District Court of the United States for the
District of Oregon.**

United States of America, Plaintiff,

VS.

Angelo H. Rossi, Defendant.

Now comes the plaintiff in error, the defendant above named, by his counsel, and presents this assignment of errors containing the assignment of errors upon which he will rely upon in the United States Circuit Court of Appeals, for the Ninth Circuit, and specifies the following particulars wherein it is claimed that the District Court erred in the course of the trial of said cause:

I.

That the trial court erred in overruling the demurrer to the indictment in this, to-wit:

(a) That the said indictment is duplicitious in that two offenses are charged or attempted to be charged therein.

(b) That the said indictment does not state facts sufficient to constitute an offense or a crime against the laws of the United States.

II.

That the trial court erred over the objection and exception of the defendant in admitting the following evidence testified to by Miss Daisy Buckner, a witness for the government:

Q. Miss Buckner, state whether or not any claims for the loss of registered stamps on the night of March 3, 1920, were filed at the postoffice at Scio, Oregon.

A. There have been.

Q. Will you just explain briefly to the jury, Miss Buckner, what these registered stamps are, and how they are registered, so that they may understand it.

* * *

A. The regulations governing the registration of war savings stamps are that stamps may be registered at any first, second or third-class postoffice, regardless of when or where they were purchased or by whom they were purchased, except that of course stamps being registered must at the time of the registration have entered upon the certificate upon which they have been pasted and are—none are registered except what are pasted upon certificates—and those stamps are each canceled separately by means of a rubber stamp, impression

stamp, bearing the postoffice number and the serial number, each number on each stamp, the serial number being the same, and beginning with 1 and numbering consecutively as long as the registration is carried out.

Q. Well, state whether or not any one in the vicinity of Scio made a claim at the Scio postoffice after March 3, 1920, for the replacement of stamps that were lost.

A. There have been perhaps—I don't know the exact number—between twenty and thirty, more or less.

Q. Twenty or thirty people?

A. Yes.

Q. Have you a list of those?

A. I have.

* * *

Q. Just read the names of the parties who have made claims for stamps.

A. Edward D. Jones, Minnie D. Jones, Albert E. Randall, Mrs. Rosella White, William A. White, Mrs. Elizabeth J. Ewing, George M. Bilyeu, Clarence Roy Scott, Marjorie Moses, Grace Bilyeu, Anton Holub, Daisy Buckner, Vaclav Prokop, Wau-nita Stepanek, Viola Stepanek, Mrs. Ollie Mac Donald, Fred Jones, Robert C. Daniel, Frankie Holub, Mrs. Melvina Randall, W. R. Kelly, W. J. Kelly,

Effie Rodgers, James Keith White, Ephriam Piatt, Ruth Eichinger, Mary Holub, Melda Bilyeu, Guy Funk, J. T. Funk, Mrs. S. O. Funk, Mrs. Nancy D. Arnold, Wilbur Funk, F. J. Denny, Chas. A. White, William Phillips, Elva Phillips, C. F. Sargent, Joe Holub, Frank Shindler, J. A. or Minnie D. Craft, Mrs. Lulu Quinn, C. H. Rockwell, Eleanor Shimanek, Mrs. Emma Holub, Mrs. Mary E. Richardson, Verlin Richardson, Thomas A. Richardson, Thomas P. Prospal, Mrs. Cora Eichinger, Antonie Prokop, John W. Scott, Glen A. Scott, C. A. Silbernagel, Rosa Silbernagel, John Soucek, Fred Mespelt, Frances Higinbotham, Eldon Vaughan, Mrs. Emma Cain and Napoleon B. Moses.

III.

That the trial court erred over the objection and exception of the defendant in admitting the following evidence testified to by W. R. Bryon, a witness for the government:

Q. I will ask you whether or not on or about the 10th day of May, 1920, you had an interview with Angelo H. Rossi?

A. I did.

Q. Was he being interviewed with a view of ascertaining information about war savings stamps?

A. He was.

Q. Was he under arrest at the time?

A. He was not.

Q. State, Mr. Bryon, as near as you can recollect, what was said by Mr. Rossi at the time.

* * *

A. I called him in there and asked him about this Earl Lee, what business he had with Earl Lee, and what he knew about him.

* * *

Q. What was said at that time?

A. By Rossi?

Q. Yes.

A. Rossi told me that he knew something about this, and that if I had any idea that he was going to give any testimony about it I might as well forget it, and throwed his fist down on the desk and made everything jump in the air. And if you want to know what I said I will repeat it.

MR. GOLDSTEIN: Go ahead. Tell what you said.

A. I told him that he was not conducting any investigation or running any part of the government's business, and that if he wanted to make any such statement as that to go downstairs and tell it to the court on the second floor; that he had a way of dealing with him; that he nor anybody around there would direct who would testify or who would not testify, or when they would testify, and that he would not be consulted concerning the operation or the direction of any government investigation,

nor be asked any suggestions. All he had to do was to answer a few simple questions.

* * *

IV.

The trial court erred over the objection and exception of the defendant in permitting the said W. R. Bryon to give such testimony orally on the ground that the same had theretofore been reduced to writing, and that the written transcript thereof was the best evidence.

V.

That the trial court erred over the objection and exception of the defendant in permitting to be read in evidence before the jury the following statement of the defendant, made to W. R. Bryon and as transcribed by Miss Harriet Doeltz, a witness for the government.

MR. VEATCH: You understand this, Rossi, that you are not required to tell me anything, but whatever you do say here can be used against you. You are in no position to tell us what you will do or what you will not do. There has been certain government property that has been stolen. It is our business to find out the men who are guilty, and it is our business to find out who all is mixed up with it. You have been called in here and given an opportunity to explain what you know about it because we know you have had correspondence with certain of these men who, we know, stole cer-

tain government property—now if you are one of that bunch we want to know it.

A. I am not.

Q. If you are not one of the bunch, now is the time to clear it up, but remember this, that when it comes to the time of trial and it is necessary for us to use you, you certainly will be called as a witness. Now, we are not promising you anything. You are in no position to demand anything.

A. Well, as far as that correspondence is concerned, there is nothing in that correspondence that can get me in wrong with the government. I know that.

Q. Well, what about going down to the U. S. Bank and getting these blank certificates for war savings stamps?

A. Yes, I did go down.

Q. And put war savings stamps on them?

A. Yes.

Q. Where did you get those stamps?

A. Got them from a fellow named Whitey.

Q. Swede Whitey?

A. Yes.

Q. The fellow now under arrest?

A. Yes.

Q. When did you get them from Whitey?

A. Well, I couldn't tell you the date exactly—it was a few days previous to the time I went down—

Q. How long have you known Whitey?

A. Two years.

Q. Well, you know Whitey is a yegg?

A. I got acquainted with him when he got paroled out of Salem; when he was working in the shipyards.

Q. Didn't you know these stamps were stolen?

A. No, I never asked those fellows any questions. There were enough stamps for seven books and maybe twenty or twenty-five over.

Q. Well, you had reason to suspect these stamps were stolen?

A. Well, it's just like this—you have to consider the source. I know when I had that store—Swede Whitey bought stamps when he worked in the shipyards because it was compulsory; but that happened a couple of years ago.

Q. Did you pay him anything for those stamps?

A. No, sir. He wanted me to dispose of them.

Q. He wanted you to sell them?

A. Yes, sir.

Q. Do you run a pawnshop?

A. No, sir.

Q. How did he happen to be selling stuff to these people?

A. Well, I don't know. That particular time he came into the store and bought a ring off from me. He asked me if I could dispose of stamps for him. I told him I didn't know—every jeweler, in fact 90 per cent of the men on the street will buy them and take them in on sales, and like that.

Q. Well, did you try to sell any of them?

A. Yes.

Q. Where?

A. I asked two or three people.

Q. Whom did you ask?

A. Well, I asked a fellow by the name of Dave Stein, but he said he would buy them if they were on books and he got a bill of sale. Well, just about that time the secret service men came into the store and I didn't have time to do anything with them.

Q. Did you try to sell to any one besides Stein?

A. Yes, I did. Two or three different pawnshops, but they wanted them for nothing, you know.

Q. What did you do with them then?

A. Well, I had them in the store and Joe Walters of the secret service came into the store and said: "Rossi, have you any war savings stamps?" I said I did. He said: "How many?" I said I had seven books of them. He said: "Where are they at?" And I handed them to him. He asked me if I had any more and I gave him the rest. He asked me where I got them and I told him, and he went up and got Swede Whitey and they arrested him, so I didn't have the stamps in my possession more than about, I should judge, a day and a half. It might have been two days.

Q. Rossi, do you know you are violating a law when you have this in your possession?

A. I didn't know it then but I know it now—Glover read the law to me. When they came into the store and I saw they were on the case, I didn't hesitate. I said: "If they are crooked I don't want them" and I gave them the stamps in two minutes. In fact I was making no secret about disposing of them. I asked several people: "Do you need war savings stamps—at a slight discount?" Whitey was asking \$3.75 each for them.

Q. Has John Bull a solution that will remove registry numbers?

* * *

A. When I got these stamps I noticed a peculiar odor, but I couldn't see any number on them.

Q. What did you mean, Rossi, when you said here that you wouldn't take the stamps in this case?

A. Because they suspicioned that I was responsible for Swede Whitey and all the rest of

them getting pinched and my 'phone rang so much—I have been compelled to carry a gun for the last three or four weeks because if I saw one of these fellows and they didn't look right to me I would see that I started shooting first. I know them people better than any one in Portland—I know what they are capable of doing.

Q. Have you gotten other stuff from these fellows?

A. No, absolutely not, never.

Q. Did you ever go as a fence for them?

A. No, sir. They never used to come near me because I never really had enough money. They do business with people who have plenty of money. The only thing, I knew Johnny Bull years ago; in fact, he is the only one I knew of that gang, although the local policemen think I acted as a fence for those boys. They never gave me 10c worth of stuff, never. I don't know whether your office is connected with Glover's office. Glover can tell you that it was through me that they got all they did get and I helped them; gave my time to it; neglected my business and everything else to help Glover on that case, with the understanding, positively, that I would not get mixed up in court with it. I thought I did enough. I personally accomplished for them what has been accomplished.

Q. Were you the informant then that Walters refused to tell his name at the hearing up here?

A. Well, I don't know. I suppose so, unless he was referring to somebody else.

Q. At the time of the commissioner's hearing—

A. I don't want to be classified as an informant or anything else. It was simply when they came, I told them the truth, that's all.

Q. That's all you can do anywhere?

A. Yes, a man is foolish if he doesn't.

Q. At the time of the commissioner's hearing, Mr. Walters was asked if he had ever seen these stamps before, and he said he had but refused to tell where he saw them, because he said it would be to his informant—that an officer is not required to tell where he got the information. You understand this man Lee was arrested in Idaho.

A. Yes.

Q. And certain correspondence passed between you and Lee?

A. Yes.

Q. You understand that we know Earl Lee, Johnny Bull and Swede Whitey robbed the Scio bank?

A. Well, that's what I heard. I never believed Lee had anything to do with Johnny Bull. He said he did in letters he wrote, because at that time Earl Lee was in trouble with an automobile, and I was giving him money to live on, and I couldn't figure how he got in on that job—of course, he may have been "bulling" me.

Q. Earl Lee was in trouble with an automobile?

A. Well, he bought a machine and forgot to pay for it, that was all.

Q. What kind of a machine did he get?

A. Hudson Super-Six.

Q. Well, Rossi, I don't know anything about your connection with them except what you told me.

A. That is the only connection I had. In fact, I never saw any of the fellows previous to a year ago.

Q. Who is "Nellie."

A. I heard she is pretty,—well smart woman. She seems to handle the bank roll.

Q. She lives with Tom Shay?

A. I always thought she lived with Gleason.

Q. Well, Tom goes by the name of Malone.

A. I'm not personally acquainted with him, only what I heard of him. He is kind of a safe cracker.

Q. You don't know whether Nellie is living with Gleason or Shay?

A. I always thought she lived with Gleason, from what I heard.

Q. What do you know about Nellie?

A. I don't know her personally. I wouldn't know her if I saw her. Just heard the fellows talk about her. Johnny Bull seems to think a lot of her. My own personal opinion is that that woman used to do the locating for that gang.

Q. Well, Rossi, the government has started out to clean out this whole bunch.

A. Well, it's a good job. I'm surprised they didn't do it years ago.

Q. We are not asking you to be informant on anybody, but we have run onto your trail in investigating this case. All we ask of you is simply to tell the truth.

A. Well, I'm giving it to you. As I say, that gang kept away from me. Of course, I always knew in my own mind that they were responsible for these robberies that were going on—they always seemed to have money. Of course, a man didn't have proof of what they were doing. I haven't seen Johnny Bull now for at least eight months. About a year and a half ago he used to come down pretty often, but something happened at that time and they got suspicious and kept away; and it, of course, pleased me.

Q. You are in this position: As I say, we have run onto your trail in investigating this case. There have been two sets of officers working on it. A part of the information we have in connection with this case came through the secret service, and a part of it has come through Mr. Bryon's office. Now, we are going to clear this thing up from top to bottom, and every man who knows anything about it is going to tell what he knows about it. That is clear, is it?

You are in no position to say here what you will or will not testify to. The only thing you can say is you will tell the truth. That is all we ask you to do.

A. I have told you the truth. I have told Glover the truth, and if the word of the secret service is not good—

Q. Well, I am not in the secret service. I am a prosecuting officer.

A. They have me to thank for what they have accomplished in this case.

Q. We know more about this case than what you have told us, that didn't come from the secret service.

Mr. Bryon:

"Salt Lake, 5:21 p. m. Evans State Bank, American Falls Draught Earl Evans State Bank Draught Earl Lee 50.00 Pomade A. Rossi everything rusty sending letter to nite Pendleton, Ore. Tragent."

Q. Now, Mr. Rossi, does that refresh your memory any?

A. I sent a telegram but I never mentioned anything about a letter to Pendleton, Oregon. I don't understand that.

Q. That is just the reason I am reading it to you, to give you time to refresh your memory and get it right.

A. Yes, I sent telegrams, but that has nothing to do with this stamp case—the yeggs—absolutely not.

A. I bank at Ashley & Rumelin Bank as Angelo H. Rossi. I got the stamps at the U. S. Hotel, 2nd and Main streets, I think, in Whitey's room. There was no one present except Whitey and Johnny Bull.

MR. VEATCH: You say this fellow Stein was one of the fellows you attempted to sell to?

A. Yes, I asked him if he could use any and he said he would let me know, and then the secret service men came. I went to see a man previous to that named Sitton, but he wouldn't have anything to do with them. When I saw Mr. Sitton they were loose. I just told him that I have a few stamps; that he was kind of a speculator, and asked him if he could use them. He said, "Well, I'll look them up." He went to the Federal Reserve Bank and looked them up, and said they were not good, only on certificates, so I went back and got certificates. That same afternoon Walters came into the store and I gave the stamps to him.

VI.

That the trial court erred over the objection and exception in permitting the following evidence testified to by Mr. P. A. Young, a witness for the government:

Q. Did Mr. Rossi make a statement before the grand jury concerning the stamp transactions now under investigation?

A. He did.

Q. Will you state, Mr. Young, to the best of your recollection, what was said by Mr. Rossi at that time?

A. Mr. Rossi told us that he had several stamp transactions, and I believe he began with one with reference to Mr. Sitton. He said that he had received stamps from— —

* * *

Q. Did Mr. Rossi say anything about where he got these stamps?

A. He told us that they came from Mr. Peterson.

Q. Did he make any statements as to where the transactions with Mr. Peterson took place?

A. The transaction, the first transaction, I believe, took place in his store.

Q. In Rossi's store.

A. In Rossi's store, and afterward took place in Mr. Peterson's room.

Q. Did he say anything about the time of day on which the second transaction took place in Mr. Peterson's room?

A. I think it was about seven o'clock in the evening.

Q. Did he say who was in the room at the time?

A. Yes, he said Johnny Bull, Mr. Peterson, and, I believe, he said that Russell Shawhan—

Q. State whether or not Mr. Rossi made mention of any other stamps or bonds in Mr. Peterson's room, at the time he made this second purchase of stamps.

A. We were asking him in regard to whether he thought the stamps were stolen, and he said that on the dresser, as he passed by, he saw a \$1000 bond and a \$500 bond, and he suspected that they were stolen.

MR. GOLDSTEIN: What were stolen?

A. That the stamps and the bonds probably were stolen, that was his version of it.

Q. Did he say anything about getting any stamps from Peterson or any one else after this time?

A. Well, I could tell by referring to the notes, but I don't recollect it.

Q. Well, do you recall, Mr. Young, whether or not Mr. Rossi made a statement of the individuals to whom he had sold or delivered the stamps?

A. Yes.

Whom did he mention?

A. He first mentioned Mr. Brenner and then Mr. Smith, and Mr. LaSalle and Mr. Stein. I think that was all Mr. Rossi mentioned.

Q. Did he mention any one by the name of Mr. Sitton?

A. Yes, sir; but he told us that that transaction previous to this transaction with Mr. Peterson.

Q. He stated the Sitton transaction was previous?

A. Yes, and that the stamps that he given to Mr. Sitton were stamps that he had purchased from other parties; that they were on cards, I believe. And he also stated that he was borrowing money from Mr. Sitton from time to time, and using these for that purpose.

Q. Did Mr. Rossi make any statement as to whether or not he had any conversation with Mr. LaSalle concerning the stamps?

A. He said he had.

Q. Do you remember what Mr. Rossi said about that at the time?

A. I can't recall it. I know that it was Mr. Rossi's testimony that he had had some transaction.

VII.

That the trial court erred over the objection and exception of the defendant in permitting the

said P. A. Young to refresh his memory as to such testimony by referring to notes that were not taken by said witness, on the ground that the best evidence was the testimony of the person who personally made said notes.

VIII.

That the trial court erred over the objection and exception of the defendant in not permitting the said witness P. A. Young to answer the following question:

Q. You didn't answer my question. Did Mr. Glover state that he had promised immunity to Mr. Rossi for the information he gave?

IX.

That the trial court erred in holding that the admissions of the defendant made before the said witness P. A. Young and before the grand jury were not induced or encouraged by the promise of immunity therefore granted to said defendant.

X.

That the trial court erred over the objection and exception of the defendant in not permitting W. A. Glover, a witness for the defendant, to state what defendant had told him concerning a conversation had with Mr. Bryon regarding the matter of immunity.

XI.

That the trial court erred in denying the motion of the defendant to strike out the testimony of the government witnesses as to alleged admissions made to them by the defendant subsequent to the promise of immunity theretofore granted to him by W. A. Glover and Joseph Walters, U. S. Secret Service operatives.

XII.

That at the close of all the evidence in the case and after the court had ruled that the testimony of W. R. Bryon, a witness for the government, should be stricken out on the ground that the admissions made by the defendant had been induced by the promise of immunity theretofore given to him, the trial court erred in failing to grant a mistrial on the ground of the highly prejudicial testimony of Bryon before the trial jury.

XIII.

That the trial court erred over the objection and exception of the defendant in permitting George H. Marsh, a witness for the government, to read in evidence in the government's case in chief, the record of a former conviction of one of the defendants, Fred Peterson, on the ground that such evidence was proof of another crime and thereby tended to prejudice all the defendants jointly indicted and tried with Peterson.

XIV.

That the trial court erred in charging the jury as follows:

“The only offense with which the defendants are charged, under the indictment, is that of conspiracy. That is the only cause on trial here, and you should confine your inquiry to that cause alone; and unless the defendants, or two or more of them, are guilty of that particular offense, they must be acquitted.

“You are not to understand, however, that you are not to take into consideration what the defendants, or any of them, have done, according as the evidence may tend to show, conducing to their inculpation. You should examine very carefully all the competent evidence offered with respect to the declarations and acts and demeanor of all the defendants, as it relates to these war savings certificates and war savings certificate stamps, in order to ascertain, if possible, how they came into the possession of the defendants, or any of them, if they ever had such possession; as to whether they were falsely made or altered by them, or any of them, if at all; as to whether they were sold or transferred or received by them, or any of them; and as to whether they, or any of them, were uttered or passed as true and genuine; all for the purpose of determining whether the defendants, or any two or more of them, conspired together, as

alleged, to commit these offenses, or any of them, or to defraud the United States.”

XV.

That the trial court erred in charging the jury as follows:

“I further instruct you that a removal of the stamps from the certificates, if done with intent to defraud, would be tantamount to an alteration of a government obligation, and would, in effect, render it a falsely made certificate or obligation within the purview of section 148 of the Penal Code and would constitute a violation thereof.”

XVI.

The trial court erred in charging the jury as follows:

“So if one should erase the registration number from the face of the stamp, or the owner’s name from the certificate, with the intent to defraud, he would be guilty of an alteration of such certificate, and would commit the offense denounced by section 148.”

XVII.

The trial court erred in charging the jury as follows:

"I instruct you, however, that the statement made by Rossi in giving evidence (before the grand jury) is not to be so disregarded by you. There is evidence tending to show that Rossi appeared before the grand jury voluntarily and of his own accord, and, although warned that whatever statement he might make would be used in evidence against him, he, notwithstanding, gave such evidence without insisting upon his immunity. The evidence, therefore, of Mr. Young, the foreman of the grand jury, was competent and pertinent to prove the admissions of Rossi with reference to the stamp transactions, and you are to regard these admissions for whatever tendency they may have, if any, to show Rossi's connection with the alleged conspiracy."

XVIII.

The trial court erred in charging the jury as follows:

"You will inquire whether the stamps were stolen, and if so, whether by either of the defendants. And in this relation I may say to you that the possession of recently stolen property affords a strong inference that the property was stolen by the person having it in his possession."

XIX.

That the trial court erred in charging the jury as follows:

“Now, gentlemen of the jury, the first question that you propound is the following: Does a stamp simply by being removed from a certificate, said certificate not being registered, become an altered stamp?

“To that I answer; that if the certificate has a stamp attached and the name of the party written upon the certificate, and the stamp thereafter has been removed with intent to defraud, then the defendant would be guilty whether the certificate or stamp was registered or not.”

XX.

That the trial court erred in charging the jury as follows:

“The next question you ask is this: If defendants thought at the time that they were handling stolen stamps, but did not know they were altered registered stamps, could we find them guilty on this indictment?

“My answer to that is that if the defendants were handling these stamps knowing them to be stolen, and they handled them with intent to defraud the United States, then they would be within the purpose of this indictment.”

XXI.

That the trial court erred in refusing to give the jury the following instruction:

“I also call your Honor’s attention to an instruction that I think might be misunderstood. Your honor stated at the outset that these defendants are not on trial for the substantive offenses themselves. That is, that they are not on trial for receiving altered obligations or having in possession altered obligations, or passing altered obligations, but they are charged with conspiring to have these things and to do those things; but that they may consider the admissions and the demeanor of the defendants. I think that is a little confusing, in that it is my contention that the proof of a conspiracy cannot be predicated upon admissions of the defendants themselves as to any part in their transaction; that the proof of conspiracy must be established beyond an admission.”

XXII.

That the trial court erred in refusing to give the jury the following instruction:

“If you believe that the confession made by Mr. Rossi to Mr. Young, foreman of the grand jury, was traceable to the hope inspired by the assurances made by Mr. Walters and Mr. Glover in the first instance, and that Mr. Rossi at the time was relying upon such assurances when he made the confession to Mr. Young, then such confession is inadmissible and you should disregard it. It is not material whether Mr. Young knew that Mr. Glover had inspired a hope in the mind of Mr. Rossi provided there was a casual connection between the hope

aroused and the confession. The fact that the confession was not made to the officer arousing that hope is immaterial. When an improper influence has been exercised it becomes the duty of the government to show that it has been removed before this subsequent confession can be held admissible."

XXIII.

The trial court erred in refusing to give the jury the following instruction:

"The basis of the jurisdiction of the United States over these offenses is that it involves an obligation or other security of the United States which is alleged to have been altered, forged, or counterfeited. If the instrument alleged to have been so altered, forged, or counterfeited is not an obligation of the United States, then there has been no violation of these counterfeiting statutes. Before you can find, therefore, that the defendants conspired to violate any of these statutes you must first of all determine to your satisfaction and beyond a reasonable doubt that the scheme alleged to have been devised by the defendants was one that had in contemplation the dealing in altered, forged, or counterfeited obligations of the United States. If the conspiracy did not have any such object in contemplation, then the scheme could not possibly have resulted in a violation of any of these statutes. In other words, if the defendants conspired to commit some offense that is not denounced by these specific statutes, or any of them, to-wit, sections

148, 151 and 154, then you cannot find any of these defendants guilty on this charge, and your verdict would under those circumstances have to be that of not guilty, so far as this particular charge is concerned."

XXIV.

The trial court erred in refusing to give the jury the following instruction:

"When and under what circumstances can the instruments alleged in the indictment to have been the subject of the alteration be considered as the obligations of the United States? I instruct you that a United States War Savings Stamp becomes an obligation of the United States only when it has been affixed to a United States War Savings Certificate and the name of the owner has been written upon that certificate. It is only when such a certificate is so made up and completed that it becomes an obligation of the United States within the meaning of the counterfeiting statutes herein involved."

XXV.

The trial court erred in refusing to give the jury the following instruction:

"If you should find, therefore, after a review of all the testimony in this case, that the prosecution has not convinced you beyond a reasonable doubt

that the object of the conspiracy was to alter or forge such obligations of the United States, as I have defined them, then it would be your duty to return a verdict of not guilty as to such defendants you find had not so conspired. In other words, if certain of the defendants entered into a conspiracy, assuming that there was a conspiracy, merely to buy, receive, possess, or sell loose war savings stamps, then they could not be said to be guilty of this offense, as such war savings stamps, considered separately, are not obligations of the United States.

XXVI.

That the trial court erred in refusing to give the jury the following instruction:

"It is further charged in the indictment that the defendants conspired to forge and alter obligations of the United States by removing a certain serial or identification number from the face of the stamps. Upon that point I instruct you that it is not an alteration or forgery of a United States war savings certificate, assuming that it was fully and completely made up so as to constitute an obligation of the United States, to erase or remove the serial number therefrom, as such serial number is not a material element of the obligation. The obligation is just as potent in the hands of the holder without as with the serial number. It is only when the certificate has been duly registered that the re-

removal of the registration number therefrom would constitute a forgery. It is not charged in the indictment, however, that the conspiracy included the scheme of altering stamps or certificates that had been registered. That being the case I instruct you that under this indictment there has been no proof that obligations of the United States had been altered by the removal of the registration number therefrom."

XXVII.

That the trial court erred in refusing to give the jury the following instruction:

"I also instruct you that it is unfair and improper to consider anything you may have heard or read concerning this case outside this courtroom to influence you in arriving at your verdict. Your verdict should depend upon the sworn testimony that you have heard here, and upon that testimony only. It appears that a number of articles were written concerning this case which might possibly have a tendency to detract from the testimony as here given under oath. If you have heard or read anything about this case outside this courtroom it is your duty under your oath to disregard it entirely. It is not only unfair to the defendants that you should entertain any prejudice against them for something that you may have heard or read outside this courtroom, but it is likewise a contempt of court to publish such matters of a

pending trial. I therefore remind you of your duty under your oath and appeal to your conscience to consider only the evidence given in this case, and none other. If, therefore, you honestly feel that the evidence as presented in this case is insufficient to convince you beyond a reasonable doubt of the guilt of the defendants, then it is your duty to return a verdict of not guilty, notwithstanding the fact that if you considered the statements in the newspapers your decision would have been otherwise. I also instruct you that your verdict must be based upon the guilt or innocence of these defendants on this charge, and none other, no matter what your opinion may be concerning their guilt upon any other charge or offense. If, therefore, you honestly feel that the evidence as given in this case is insufficient to convince you beyond a reasonable doubt of the guilt of the defendants in conspiring to violate the counterfeiting statutes, then it is your duty to return a verdict of not guilty, notwithstanding you might believe them guilty of some other offense.

XXVIII.

That the trial court erred in refusing to grant defendant's motion to strike out the testimony of P. A. Young as to admissions made by the defendant before him and the grand jury, on the ground that it was an involuntary statement made and induced by the promise of immunity.

XXIX.

That the trial court erred in denying the motion for a new trial on behalf of the defendant in this, to-wit:

(a) That the record fails to show that the defendant has pleaded to this indictment as required by law, and, therefore, no issue being had there was nothing for the jury to try;

(b) That the defendant was prejudiced at the outset of the trial and during the course of the trial by articles appearing in newspapers then and there published and generally circulated in the City of Portland, Oregon, where said cause was being tried, which said articles were of such a nature as to arouse public prejudice against this defendant, and were thereby calculated to prejudice the jury against him;

(c) That the defendant was prejudiced by remarks of the court made during the course of the trial.

XXX.

That the defendant did not have a fair and impartial trial by reason of the prejudice aroused against him during the course of the trial by articles appearing in newspapers published and circulated in the City of Portland, where said cause was being tried.

XXXI.

That the defendant did not have a fair and impartial trial by reason of the following prejudicial remarks of the court made during the course of the trial, to-wit:

"During the examination of William Glover, a witness for the defendant and a former United States secret service operative, when questioned by the attorney for the defendant, testified as follows:

"Q. Did you come to me and ask me to put you on the stand?

"A. I did, sir, night before last.

"Q. Why did you ask that?

"A. When I saw—the reason for asking you to put me on the stand—I saw that Mr. Veatch was not going to put me on the stand so I could explain away some of this newspaper notoriety that has been filtering here for the last six months; so I came to you and requested you to give me a chance to get the truth before this court and my friends here.

"Q. This was a personal request of me as a friend of yours?

"A. Yes, absolutely."

Whereupon the court intervened as follows:

"COURT: Who is your friend?

"A. Well, I have friends all over the coast, your honor.

"COURT: I thought you meant Rossi."

XXXII.

That the trial court erred in denying and overruling the motion of the defendant in arrest of judgment in this, to-wit:

1. That the said indictment is duplicitous in that two offenses are charged or attempted to be charged therein;

2. That the said indictment does not state facts sufficient to constitute an offense or a crime against the laws of the United States;

3. That no issue has been joined herein in that the defendant has never pleaded to this indictment; and that because of which said errors in the record herein, no lawful judgment can be rendered by the court upon the record in this case.

XXXIII.

That the trial court erred in entering judgment against the defendant, upon the ground that he had never pleaded to the indictment, and that therefore no issue had been joined.

XXXIV.

That the trial court erred in entering judgment against the defendant upon the verdict in this case.

WHEREFORE, the defendant, plaintiff in error, prays that the above and foregoing assignment of errors be considered as his assignment of errors upon the writ of error; and further prays that the judgment heretofore rendered in this cause may be reversed and held for naught, and that the plaintiff in error, defendant above named, have such other and further relief as may be in conformity to law and the practice of the court.

BARNETT H. GOLDSTEIN,
Attorney for Defendant.

Due, timely and legal service by copy admitted at Portland, Oregon, this 10th day of May, 1921.

JOHN C. VEATCH,
Attorney for Plaintiff.

Filed, May 10, 1921.

Geo. H. Marsh, Clerk.

And afterwards, to-wit: on Tuesday, the 10th day of May, 1921, the same being the 56th judicial day of the regular March term of said Court; present the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER ALLOWING WRIT OF ERROR.

**In the District Court of the United States for the
District of Oregon.**

United States of America, Plaintiff,

vs.

Angelo H. Rossi, Defendant.

Upon reading and filing the petition of the said defendant, Angelo H. Rossi, for an order allowing him to prosecute a writ of error from the United States Circuit Court of Appeals of the Ninth Circuit to the District Court of the United States for the District of Oregon, and

It appearing that said defendant has filed herein the assignment of errors relied upon, it is now therefore hereby ordered that said petition hereinbefore referred to be, and the same is, hereby allowed, and that a writ of error issue as in said petition prayed for, and that a citation be issued and served herein, and it is further ordered that said writ of error so allowed operate as a supersedeas, and the defendant be admitted to bail upon furnishing a bond in the penal sum of One Thousand Dollars (\$1000.00), conditioned according to law to be approved by me.

Dated, May 10, 1921.

CHARLES E. WOLVERTON,
Judge.

STATE OF OREGON, }
 }ss.
County of Multnomah. J

Due, timely and legal service by copy, admitted at Portland, Oregon, this 10th day of May, 1921.

JOHN C. VEATCH,
Assistant U. S. Attorney.

Filed, May, 10, 1921.

Geo. H. Marsh, Clerk.

And afterwards, to-wit: on the 10th day of May, 1921, there was duly filed in said court, Bail Bond on writ of Error, in words and figures as follows, to-wit:

BAIL BOND ON WRIT OF ERROR.

**In the District Court of the United States for the
District of Oregon.**

United States of America, Plaintiff,

vs.

Angelo H. Rossi, Defendant.

KNOW ALL MEN BY THESE PRESENTS,
That I. Angelo H. Rossi, of the County of Multnomah, State of Oregon, as principal, and Charles E. Wayne, of the County of Multnomah, State of Oregon, and Mary C. Carlock, of the County of Multnomah, State of Oregon, as sureties, are held and

firmly bound unto the United States of America in the full and just sum of One Thousand Dollars, to be paid to the United States of America, to which payment well and truly made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 10th day of May, in the year of our Lord, One Thousand Nine Hundred and Twenty-one.

Whereas, lately on the 26th day of January, 1921, at Portland, Oregon, in the District Court of the United States for the District of Oregon, in a cause pending in said Court between the United States of America, Plaintiff, and Angelo H. Rossi, and others, Defendants, a judgment and sentence was rendered against said Angelo H. Rossi, and said Angelo H. Rossi obtained a Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit to the United States District Court to reverse the judgment and sentence in the aforesaid cause, and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the said Court thirty days from and after the date thereof, which citation has been duly served.

Now the condition of said obligation is such, that if the said Angelo H. Rossi shall appear in person in the United States Circuit Court of Appeals for the Ninth Circuit when said cause is reached for argument or when required by law or

rule of said court, and from day to day thereafter in said Court until said cause shall be finally disposed of, and shall abide by and obey the judgment and all orders made by the said Court of Appeals in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct, if the judgment and sentence against him shall be affirmed, then the above obligation to be void; otherwise to remain in full force, virtue and effect.

Angelo H. Rossi.
Charles E. Wayne.
Mary C. Carlock.

STATE OF OREGON, }
 }ss.
County of Multnomah. }

I, Charles E. Wayne and Mary C. Carlock, whose names are subscribed as sureties to the above described bond, being severally duly sworn, each for himself says, that I am a resident and freeholder within the State of Oregon, and am worth the sum of One Thousand Dollars (\$1000.00) over and above all property exempt from Execution.

Charles E. Wayne.
Mary C. Carlock.

Subscribed and sworn to before me this 10th day of May, 1921.

(SEAL)

G. H. MARSH,
Clerk, United States District Court,
District of Oregon.

Approved by:

Charles E. Wolverton,
Judge.

STATE OF OREGON,)
 }ss.
County of Multnomah.)

Due, timely and legal service by copy admitted
at Portland, Oregon, this 10th day of May, 1921.

JOHN C. VEATCH,
Assistant United States Attorney.

Filed, May 10, 1921.

G. H. Marsh, Clerk.

And afterwards, to-wit: on the..... day of June,
1921, there was duly filed in said Court a Stip-
ulation in words and figures as follows, to-wit:

STIPULATION.

**In the District Court of the United States for the
District of Oregon.**

United States of America, Plaintiff,

vs.

Angelo H. Rossi, Defendant.

The attorneys for the plaintiff in error herein
having prepared and compared with the original

record the within printed transcript, now, therefore, it is hereby stipulated and agreed by and between the parties to the within proceedings for a writ of error, by and through their respective attorneys, that the within printed record tendered to the clerk of the United States District Court for the District of Oregon for his certificate, is a true transcript of the record in the within cause and that the clerk of said Court shall certify the said printed transcript without comparison thereof with the original record.

BARNETT H. GOLDSTEIN,
Attorney for Plaintiff in Error.

JOHN C. VEATCH,
Attorney for Defendant in Error.

Dated, June 1, 1921.

CLERK'S CERTIFICATE.

United States of America,	}
	}ss.
District of Oregon,	}

The attorneys for the respective parties to the within proceedings having stipulated that the within printed transcript of record, as prepared, compared and tendered to me for certification by the attorneys for the plaintiff in error, is a true transcript of the record in this cause and that I shall certify the same without comparison.

Now, therefore, in accordance with the said stipulation, I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify without comparing the same with the original thereof, that the foregoing transcript of record upon the writ of error in the case in which Angelo H. Rossi is defendant and plaintiff in error, and the United States of America is plaintiff and defendant in error, is a full, true and correct transcript of the record and proceedings had in said Court in said cause, as the same appear of record and on file at my office and in my custody, the same having been compared by attorneys for plaintiff in error.

And I further certify that the fee for certifying to the within transcript, to-wit: the sum of (50 cents) has been paid by the said plaintiffs in error.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Portland, in said district, this.....day of June, 1921.

Clerk of the District Court of the
United States for the District of Oregon.

No. 3710

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

ANGELO H. ROSSI,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

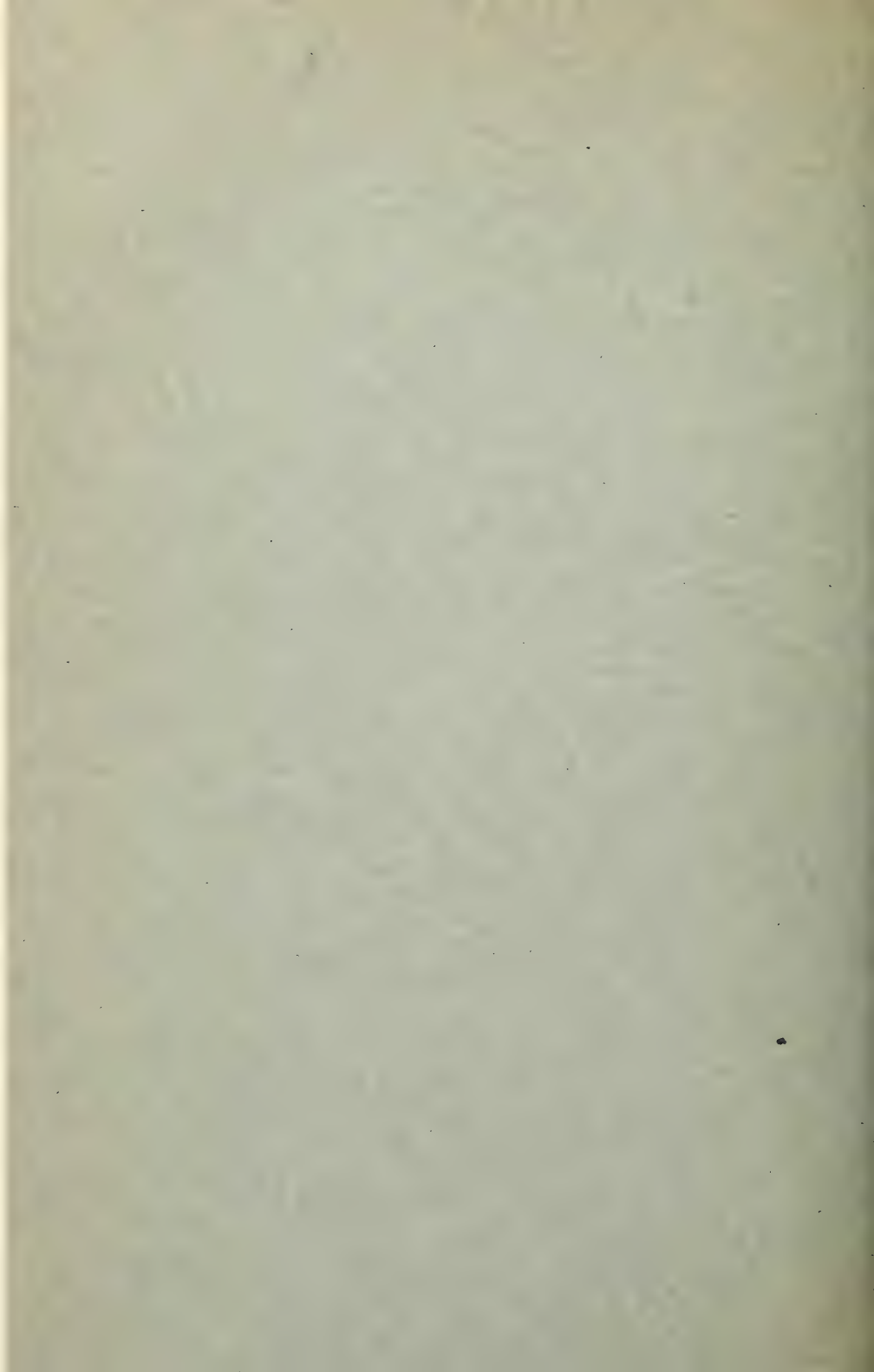
BRIEF FOR PLAINTIFF IN ERROR

Upon Writ of Error to the District Court of the
United States for the District of Oregon.

BARNETT H. GOLDSTEIN,

Attorney for Plaintiff in Error,

1110 Wilcox Building, Portland, Oregon.



INDEX

	Page
Adler v. United States, 182 Fed. 404.....	83
Allan v. United States, 116 Fed. 572.....	83
Ammerman v. United States, 216 Fed. 326.....	67
Andrea v. Ketcham, 77 Ill. 379.....	87
Beck v. United States, 145 Fed. 625.....	72
Bran v. United States, 168 Fed. 532.....	106
Briggs v. People, 76 N. E. 502.....	86
Citizens Natl. Bank v. Williams, 35 L. R. A. 467.	50
City of Elizabeth v. Force, 29 N. J. E. 587.....	52
Commonwealth v. Bank, 98 Mass. 12.....	51
Commonwealth v. Ellis, 118 S. W. 976.....	99
Commonwealth v. Hayward, 10 Mass. 34.....	52
Conley v. State, 7 S. W. 255.....	111-124

	Page
Cooper v. People, 22 Pac. 799.....	94
Crain v. United States, 162 U. S. 625.....	69
De Lemos v. United States, 91 Fed. 497.....	40
Ellis v. State, 3 So. 188.....	121-125
Eskay v. United States, 261 Fed. 320.....	80
Feder v. United States, 257 Fed. 694.....	132
Ford v. United States, 259 Fed. 552.....	100
Foster v. United States, 188 Fed. 385.....	83
Garland v. Washington, 232 U. S. 645.....	73
John Gund Brewing Co. v. United States, 204 Fed. 17	67
Grynor v. State, 49 S. E. 700.....	110
Harold v. Oklahoma, 169 Fed. 47.....	122
Harrison v. United States, 200 Fed. 669.....	93
Hawkins v. United States, 116 Fed. 572.....	84
Jelke v. United States, 255 Fed. 275.....	65
Keane v. United States, 272 Fed. 577.....	61

Kennedy v. Territory, 44 Ill. 283.....	87
Kirk v. Territory, 60 Pac. 797.....	85-122
Leahy v. State, 48 N. W. 390.....	120
McNutt v. United States, 267 Fed. 670.....	80-85
Oertel Co. v. Gregory, 270 Fed. 789.....	62
O'Shea v. People, 75 N. E. 984.....	86
People v. Abell, 71 N. W. 508.....	120
People v. Levinger, 1912 D. Ann. Cases 239....	49
People v. Wells, 34 Pac. 1078.....	121
Porter v. Throop, 11 N. W. 174.....	121
Rabens v. United States, 146 Fed. 879.....	98
Rutherford v. United States, 258 Fed. 863.....	85
Sandals v. United States, 213 Fed. 576.....	83
Shelp v. United States, 81 Fed. 700.....	71
Silverthorne v. United States, 251 U. S. 385.....	116
State v. Donovan, 16 N. W. 206.....	84
State v. Hendry, 54 L. R. A. 794.....	49

	Page
State v. Howell, 13 Ann. Cases 503.....	94
State v. Rein, 49 Fed. 700.....	124
State v. Walton, 50 Ore. 142.....	72
State v. Wintzingerode, 9 Ore. 153.....	107
United States v. Chapman, Fed. Case 14783...	110
United States v. Charles, Fed. Case 14786....	108
United States v. Cooper, Fed. Case 14864.....	109
United States v. Dembowsky, 252 Fed. 894....	65
United States v. Eaton, 144 U. S. 677.....	46-58
United States v. George, 228 U. S. 14.....	63
United States v. Kallas, 272 Fed. 753.....	115
United States v. Moody, 164 Fed. 269.....	58
United States v. Patty, 2 Fed. 664.....	66
United States v. Rossi, 266 Fed. 622.....	41-52
United States v. Saks, (Appendix)	45-60
United States v. Toledo Newspaper Co., 220 Fed. 501	94

	Page
United States v. Van Wert, 195 Fed. 924.....	58
Ward v. State, 21 S. W. 250.....	99
Wilson v. United States, 162 U. S. 613.....	126
Wylie v. Missouri Pacific Ry. Co., 41 Fed. 623..	51

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

ANGELO H. ROSSI,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR

STATEMENT OF THE CASE

The indictment in this case is in one count. It charges a conspiracy, under Section 37 of the Penal Code, to violate certain counterfeiting statutes of the United States, to-wit: Sections 148, 151 and 154 of the Penal Code. There is further charged in the same count a conspiracy to defraud the United States. In brief, the conspiracy is said to have contemplated a scheme of

altering United States War Savings Certificates and United States War Savings Certificate Stamps by detaching the stamps from the certificates to which they had been affixed and by erasing the serial number from the face of the stamps, and of buying, possessing and selling the same with the various intents denounced by the counterfeiting statutes hereinbefore mentioned. The defendant Rossi, (Plaintiff in Error here) one of the alleged conspirators, challenged the sufficiency of the indictment by demurrer, claiming that it failed to state sufficient facts, and further that it was duplicitious (trans. p. 29). The demurrer was duly argued and taken under advisement. Prior to the court's decision thereon, which was adverse to the defendant, and before any plea had been interposed to the indictment, the case was set down for trial and was in fact tried without any issue having been joined by this defendant. (Trans. p. 17.) The trial resulted in the acquittal of one defendant, disagreement as to three others, and conviction of the defendants Rossi and Peterson. From the judgment entered thereon, each of the last named defendants prosecuted a writ of error to this court. Under date of August 1, 1921, this court having heard Peterson's writ, rendered an opinion in his favor, holding that the Government had failed to establish the charge of conspiracy.

The points involved in the case at issue, which will be discussed in the order named, are as follows:

1. Insufficiency of indictment.
2. Record fails to show any issue joined by defendant.
3. Prejudicial remarks of trial judge.
4. Prejudicial newspaper accounts rendering fair trial impossible.
5. Improper evidence as to registration of stamps.
6. Improper evidence as to defendant's admissions before grand jury.
7. Prejudicial testimony of defendant's admissions to Bryon.
8. Error in instructions.
9. Re new trial granted to Peterson.

SPECIFICATIONS OF ERROR.

I.

That the trial court erred in overruling the demurrer to the indictment in this, to-wit:

(a) That the said indictment is duplicitious in that two offenses are charged or attempted to be charged therein.

(b) That the said indictment does not state facts sufficient to constitute an offense or a crime against the laws of the United States.

II.

The trial court erred over the objection and exception of the defendant in admitting the following evidence testified to by Miss Daisy Buckner, a witness for the government:

Q. Miss Buckner, state whether or not any claims for the loss of registered stamps on the night of March 3, 1920, were filed at the postoffice at Scio, Oregon.

A. There have been.

Q. Will you just explain briefly to the jury, Miss Buckner, what these registered stamps are, and how they are registered, so that they may understand it.

A. The regulations governing the registration of war savings stamps are that stamps may be registered at any first, second or third-class postoffice, regardless of when or where they were purchased or by whom they were purchased, except that of course stamps being registered must at the time of the registration have entered upon the certificate upon which they have been pasted and are—none are registered except what are pasted upon certificates—and those stamps are each cancelled separately by means of a rubber stamp, impression stamp, bearing the postoffice number and the serial number, each number on each stamp, the serial number being the same, and beginning with 1 and numbering consecutively as long as the registration is carried out.

Q. Well, state whether or not any one in the vi-

cinity of Scio made a claim at the Scio postoffice after March 3, 1920, for the replacement of stamps that were lost.

A. There have been perhaps—I don't know the exact number—between twenty and thirty, more or less.

Q. Twenty or thirty people?

A. Yes.

Q. Have you a list of those?

A. I have.

Q. Just read the names of the parties who have made claims for stamps.

A. Edward D. Jones, Minnie D. Jones, Albert E. Randall, Mrs. Rosella White, William A. White, Mrs. Elizabeth J. Ewing, George M. Bilyeu, Clarence Roy Scott, Marjorie Moses, Grace Bilyeu, Anton Holub, Daisy Buckner, Vaclav Prokop, Waunita Stepanek, Viola Stepanek, Mrs. Ollie MacDonald, Fred Jones, Robert C. Daniel, Frankie Holub, Mrs. Melyina Randall, W. R. Kelly, W. J. Kelly, Effie Rodgers, James Keith White, Ephraim Piatt, Ruth Eichinger, Mary Holub, Melda Bilyeu, Guy Funk, J. T. Funk, Mrs. O. S. Funk, Mrs. Nancy D. Arnold, Wilbur Funk, F. J. Denny, Chas. A. White, William Phillips, Elva Phillips, C. F. Sargent, Joe Holub, Frank Schindler, J. A. or Minnie D. Craft, Mrs. Lulu Quinn, C. H. Rockwell, Eleanor Shimanek, Mrs. Emma Holub, Mrs. Mary E. Richardson, Verlin Richardson, Thomas A. Richardson,

Thomas P. Prospal, Mrs. Cora Eichinger, Antoine Prokop, John W. Scott, Glen A. Scott, C. A. Silbernagel, Rosa Silvernagel, John Soucek, Fred Mespelt, Frances Higinbotham, Eldon Vaughan, Mrs. Emma Cain and Napoleon B. Moses.

III.

That the trial court erred over the objection and exception of the defendant in admitting the following evidence testified to by W. R. Bryon, a witness for the government:

Q. I will ask you whether or not on or about the 10th day of May, 1920, you had an interview with Angelo H. Rossi?

A. I did.

Q. Was he being interviewed with a view of ascertaining information about war savings stamps?

A. He was.

Q. Was he under arrest at the time?

A. He was not.

Q. State, Mr. Bryon, as near as you can recollect, what was said by Mr. Rossi at the time.

A. I called him in there and asked him about this Earl Lee, what business he had with Earl Lee, and what he knew about him.

Q. What was said at that time?

A. By Rossi?

Q. Yes.

A. Rossi told me that he knew something about this, and that if I had any idea that he was going to give any testimony about it I might as well forget it, and throwed his fist down on the desk and made everything jump in the air. And if you want to know what I said I will repeat it.

MR. GOLDSTEIN: Go ahead. Tell what you said.

A. I told him that he was not conducting any investigation or running any part of the government's business, and that if he wanted to make any such statement as that to go downstairs and tell it to the court on the second floor; that he had a way of dealing with him; that he nor anybody around there would direct who would testify or who would not testify, or when they would testify, and that he would not be consulted concerning the operation or the direction of any government investigation, nor be asked any suggestion. All he had to do was to answer a few simple questions.

IV.

The trial court erred over the objection and exception of the defendant in permitting the said W. R. Bryon to give such testimony orally on the ground that the same had theretofore been reduced to writing, and that the written transcript thereof was the best evidence.

V.

The trial court erred over the objection and exception of the defendant in permitting to be read in evidence before the jury the following statement of the defendant, made to W. R. Bryon and as transcribed by Miss Harriet Doeltz, a witness for the government.

MR. VEATCH: You understand this, Rossi, that you are not required to tell me anything, but whatever you do say here can be used against you. You are in no position to tell us what you will do or what you will not do. There has been certain government property that has been stolen. It is our business to find out the men who are guilty, and it is our business to find out who all is mixed up with it. You have been called in here and given an opportunity to explain what you know about it because we know you have had correspondence with certain of these men who, we know, stole certain government property—now if you are one of that bunch we want to know it.

A. I am not.

Q. If you are not one of the bunch, now is the time to clear it up, but remember this, that when it comes to the time of trial it is necessary for us to use you, you certainly will be called as a witness. Now, we are not promising you anything. You are in no position to demand anything.

A. Well, as far as that correspondence is con-

cerned, there is nothing in that correspondence that can get me in wrong with the government. I know that.

Q. Well, what about going down to the U. S. Bank and getting these blank certificates for war savings stamps?

A. Yes, I did go down.

Q. And put war savings stamps on them?

A. Yes.

Q. Where did you get those stamps?

A. Got them from a fellow named Whitey.

Q. Swede Whitey?

A. Yes.

Q. The fellow now under arrest?

A. Yes.

Q. When did you get them from Whitey?

A. Well, I couldn't tell you the date exactly—it was a few days previous to the time I went down—

Q. How long have you known Whitey?

A. Two years.

Q. Well, you know Whitey is a yegg?

A. I got acquainted with him when he got paroled out of Salem; when he was working in the shipyards.

Q. Didn't you know these stamps were stolen?

A. No, I never asked those fellows any questions. There were enough stamps for seven books and maybe twenty or twenty-five over.

Q. Well, you had reason to suspect these stamps were stolen?

A. Well, it's just like this—you have to consider the source. I know when I had that store—Swede Whitey bought stamps when he worked in the shipyards because it was compulsory; but that happened a couple of years ago.

Q. Did you pay him anything for those stamps?

A. No, sir. He wanted me to dispose of them.

Q. He wanted you to sell them?

A. Yes, sir.

Q. Do you run a pawnshop?

A. No, sir.

Q. How did he happen to be selling stuff to these people?

A. Well, I don't know. That particular time he came into the store and bought a ring off from me. He asked me if I could dispose of stamp for him. I told him I didn't know—every jeweler, in fact 90 per cent of the men on the street will buy them and take them in on sales, and like that.

Q. Well, did you try to sell any of them?

A. Yes.

Q. Where?

A. I asked two or three people.

Q. Whom did you ask?

A. Well, I asked a fellow by the name of Dave Stein, but he said he would buy them if they were on books and he got a bill of sale. Well, just about that

time the secret service men came into the store and I didn't have time to do anything with them.

Q. Did you try to sell to any one beside Stein?

A. Yes, I did. Two or three different pawnshops, but they wanted them for nothing, you know.

Q. What did you do with them then?

A. Well, I had them in the store and Joe Walters of the secret service came into the store and said: "Rossi, have you any war savings stamps?" I said I did. He said: "How many?" I said I have seven books of them. He said: "Where are they at?" And I handed them to him. He asked me if I had any more and I gave him the rest. He asked me where I got them and I told him, and he went up and got Swede Whitey and they arrested him, so I didn't have the stamps in my possession more than about, I should judge, a day and a half. It might have been two days.

Q. Rossi, do you know you are violating a law when you have this in your possession?

A. I didn't know it then but I know it now—Glover read the law to me. When they came into the store and I saw they were on the case, I didn't hesitate. I said: "If they are crooked I don't want them" and I gave them the stamps in two minutes. In fact I was making no secret about disposing of them. I asked several people: "Do you need war savings stamps—at a slight discount?" Whitey was asking \$3.75 each for them.

Q. Has John Bull a solution that will remove the registry numbers?

A. When I got these stamps I notices a peculiar odor, but I couldn't see any number on them.

Q. What did you mean, Rossi, when you said here that you wouldn't take the stamps in this case?

A. Because they suspicioned that I was responsible for Swede Whitey and all the rest of them getting pinched and my 'phone rang so much—I have been compelled to carry a gun for the last three or four weeks because if I saw one of these fellows and they didn't look right to me I would see that I started shooting first. I know them people better than any one in Portland—I know what they are capable of doing.

Q. Have you gotten other stuff from these fellows?

A. No, absolutely not, never.

Q. Did you ever go as a fence for them?

A. No, sir. They never used to come near me because I never really had enough money. They do business with people who have plenty of money. The only thing, I knew Johnny Bull years ago; in fact, he is the only one I knew of that gang, although the local policemen think I acted as a fence for those boys. They never gave me 10c worth of stuff, never. I don't know whether your office is connected with Glover's office. Glover can tell you that it was through me that they got all they did get and I helped them; gave my time to it; neglected my business and everything else to help

Glover on that case, with the understanding, positively, that I would not get mixed up in court with it. I thought I did enough. I personally accomplished for them what has been accomplished.

Q. Were you the informant then that Walters refused to tell his name at the hearing up here?

A. Well, I don't know. I suppose so, unless he was referring to somebody else.

Q. At the time of the commissioner's hearing—

A. I don't want to be classified as an informant or anything else. It was simply when they came, I told them the truth, that's all.

Q. That's all you can do anywhere?

A. Yes, a man is foolish if he doesn't.

Q. At the time of the commissioner's hearing, Mr. Walters was asked if he had ever seen these stamps before, and he said he had, but refused to tell where he saw them, because he said it would be to his informant—that an officer is not required to tell where he got the information. You understand this man Lee was arrested in Idaho.

A. Yes.

Q. And certain correspondence passed between you and Lee?

A. Yes.

Q. You understand that we know Earl Lee, Johnny Bull and Swede Whitey robbed the Scio bank?

A. Well, that's what I heard. I never believed

Lee has anything to do with Johnny Bull. He said he did in letters he wrote, because at that time Earl Lee was in trouble with an automobile, and I was giving him money to live on, and I couldn't figure how he got in on that job—of course, he may have been "bulling" me.

Q. Earl Lee was in trouble with an automobile?

A. Well, he bought a machine and forgot to pay for it, that was all.

Q. What kind of a machine did he get?

A. Hudson Super-Six.

Q. Well, Rossi, I don't know anything about your connection with them except what you told me.

A. That is the only connection I had. In fact, I never saw any of the fellows previous to a year ago.

Q. Who is "Nellie?"

A. I heard she is pretty,—well smart woman. She seems to handle the bank roll.

Q. She lives with Tom Shay?

A. I always thought she lived with Gleason.

Q. Well, Tom goes by the name of Malone.

A. I'm not personally acquainted with him, only what I heard of him. He is kind of a safe cracker.

Q. You don't know whether Nellie is living with Gleason or Shay?

A. I always thought she lived with Gleason, from what I heard.

Q. What do you know about Nellie?

A. I don't know her personally. I wouldn't know her if I saw her. Just heard fellows talk about her. Johnny Bull seems to think a lot of her. My own personal opinion is that that woman used to do the locating for that gang.

Q. Well, Rossi, the government has started out to clean out this whole bunch.

A. Well, it's a good job. I'm surprised they didn't do it years ago.

Q. We are not asking you to be informant on anybody, but we have run onto your trail in investigating this case. All we ask of you is simply to tell the truth.

A. Well, I'm giving it to you. As I say, that gang kept away from me. Of course, I always knew in my own mind that they were responsible for these robberies that were going—they always seemed to have money. Of course, a man didn't have proof of what they were doing. I haven't seen Johnny Bull now for at least eight months. About a year and a half ago he used to come down pretty often, but something happened at that time and they got suspicious and kept away; and it, of course, pleased me.

Q. You are in this position: As I say, we have run onto your trail in investigating this case. There have been two sets of officers working on it. A part of the information we have in connection with this case came through the secret service, and a part of it has come through Mr. Bryon's office. Now, we are going to

clear this thing up from top to bottom, and every man who knows anything about it is going to tell what he knows about it. That is clear, is it? You are in no position to say here what you will or will not testify to. The only thing you can say is you will tell the truth. That is all we ask you to do.

A. I have told you the truth. I have told Glover the truth, and if the word of the secret service is not good—

Q. Well, I am not in the secret service. I am a prosecuting officer.

A. They have me to thank for what they have accomplished in this case.

Q. We know more about this case than what you have told us, that didn't come from the secret service.

Mr. Bryon:

"Salt Lake, 5:21 p. m. Evans State Bank, America Falls Draught Earl Evans State Bank Draught Earl Lee 50.00 Pomade A. Rossi everything rusty sending letter to nite Pendleton, Ore. Tragent."

Q. Now, Mr. Rossi, does that refresh your memory any?

A. I sent a telegarm but I never mentioned anything about a letter to Pendleton, Oregon. I don't understand that.

Q. That is just the reason I am reading it to you, to give you time to refresh your memory and get it right.

A. Yes, I sent telegrams, but that has nothing to do with this stamp case—the yeggs—absolutely not.

A. I bank at Ashley & Rumelin Bank as Angelo H. Rossi. I got the stamps at the U. S. Hotel, 2nd and Main streets, I think, in Whitey's room. There was no one present except Whitey and Johnny Bull.

MR. VEATCH: You say this fellow Stein was one of the fellows you attempted to sell to?

A. Yes, I asked him if he could use any and he said he would let me know, and then the secret service men came. I went to see a man previous to that named Sitton, but he wouldn't have anything to do with them. When I saw Mr. Sitton they were loose. I just told him that I have a few stamps; that he was kind of a speculator, and asked him if he could use them. He said, "Well, I'll look them up." He went to the Federal Reserve Bank and looked them up, and said they were not good, only on certificates, so I went back and got certificates. That same afternoon Walters came into the store and I gave the stamps to him.

VI.

The trial court erred over the objection and exception in permitting the following evidence testified to by Mr. P. A. Young, a witness for the government:

Q. Did Mr. Rossi make a statement before the

grand jury concerning the stamp transactions now under investigation?

A. He did.

Q. Will you state, Mr. Young, to the best of your recollection, what was said by Mr. Rossi at that time?

A. Mr. Rossi told us that he had several stamp transactions, and I believe he began with one with reference to Mr. Sitton. He said that he had received stamps from—

Q. Did Mr. Rossi say anything about where he got these stamps?

A. He told us that they came from Mr. Peterson.

Q. Did he make any statements as to where the transactions with Mr. Peterson took place?

A. The transaction, the first transaction, I believe, took place in his store.

Q. In Rossi's store?

A. In Rossi's store, and afterward took place in Mr. Peterson's room.

Q. Did he say anything about the time of day on which the second transaction took place in Mr. Peterson's room.

A. I think it was about seven o'clock in the evening.

Q. Did he say who was in the room at the time?

A. Yes, he said Johnny Bull, Mr. Peterson, and, I believe, he said that Russell Shawhan—

Q. State whether or not Mr. Rossi made mention

of any other stamps or bonds in Mr. Peterson's room, at the time he made this second purchase of stamps.

A. We were asking him in regard to whether he thought the stamps were stolen, and he said that on the dresser, as he passed by, he saw a \$1000 bond and a \$500 bond, and he suspected that they were stolen.

MR. GOLDSTEIN: What were stolen?

A. That the stamps and the bonds probably were stolen, that was his version of it.

Q. Did he say anything about getting any stamps from Peterson or any one else after this time?

A. Well, I could tell by referring to the notes, but I don't recollect it.

Q. Well, do you recall, Mr. Young, whether or not Mr. Rossi made a statement of the individuals to whom he had sold or delivered the stamps?

A. Yes.

Q. Whom did he mention?

A. He first mentioned Mr. Brenner and then Mr. Smith, and Mr. La Salle and Mr. Stein. I think that was all Mr. Rossi mentioned.

Q. Did he mention any one by the name of Mr. Sitton?

A. Yes, sir; but he told us that that transaction previous to this transaction with Mr. Peterson.

Q. He stated the Sitton transaction was previous?

A. Yes, and that the stamps that he gave to Mr. Sitton were stamps that he had purchased from other

parties; that they were on cards, I believe. And he also stated that he was borrowing money from Mr. Sitton from time to time and using these for that purpose.

Q. Did Mr. Rossi make any statement as to whether or not he had any conversation with Mr. La Salle concerning the stamps?

A. He said he had.

Q. Do you remember what Mr. Rossi said about that at the time?

A. I can't recall it. I know that it was Mr. Rossi's testimony that he had had some transaction.

VII.

That the trial court erred over the objection and exception of the defendant in permitting the said P. A. Young to refresh his memory as to such testimony by referring to notes that were not taken by said witness, on the ground that the best evidence was the testimony of the person who personally made said notes.

VIII.

That the trial court erred over the objection and exception of the defendant in not permitting the said witness P. A. Young to answer the following question:

Q. You didn't answer my question. Did Mr. Glover state that he had promised immunity to Mr. Rossi for the information he gave?

IX.

That the trial court erred in holding that the admissions of the defendant made before the said witness P. A. Young and before the grand jury were not induced or encouraged by the promise of immunity theretofore granted to said defendant.

X.

That the trial court erred over the objection and exception of the defendant in not permitting W. A. Glover, a witness for the defendant, to state what defendant had told him concerning a conversation had with Mr. Bryon regarding the matter of immunity.

XI.

That the trial court erred in denying the motion of the defendant to strike out the testimony of the government witnesses as to alleged admissions made to them by the defendant subsequent to the promise of immunity theretofore granted to him by W. A. Glover and Joseph Walters, U. S. Secret Service operatives.

XII.

That at the close of all the evidence in the case and after the court had ruled that the testimony of W. R. Bryon, a witness for the government, should be stricken out on the ground that the admissions made by the

defendant had been induced by the promise of immunity theretofore given to him, the trial court erred in failing to grant a mistrial on the ground of the highly prejudicial testimony of Bryon before the trial jury.

XIII.

That the trial court erred over the objection and exception of the defendant in permitting George H. Marsh, a witness for the government, to read in evidence in the government's case in chief, the record of a former conviction of one of the defendant's Fred Peterson, on the ground that such evidence was proof of another crime and thereby tended to prejudice all the defendants jointly indicted and tried with Peterson.

XIV.

That the trial court erred in charging the jury as follows:

"The only offense with which the defendants are charged, under the indictment, is that of conspiracy. That is the only cause on trial here, and you should confine your inquiry to that cause alone; and unless the defendants, or two or more of them, are guilty of that particular offense, they must be acquitted.

"You are not to understand, however, that you are not to take into consideration what the defendants, or any of them, have done, according as the evidence may

tend to show, conducing to their inculpation. You should examine very carefully all the competent evidence offered with respect to the declarations and acts and demeanor of all the defendants, as it relates to these war savings certificates and war savings certificate stamps, in order to ascertain, if possible, how they came into the possession of the defendants, or any of them, if they ever had such possession; as to whether they were falsely made or altered by them, or any of them, if at all; as to whether they were sold or transferred or received by them, or any of them; and as to whether they, or any of them, were uttered or passed as true and genuine; all for the purpose of determining whether the defendants, or any two or more of them, conspired together, as alleged, to commit these offenses, or any of them, or to defraud the United States."

XV.

That the trial court erred in charging the jury as follows:

"I further instruct you that a removal of the stamps from the certificates, if done with intent to defraud, would be tantamount to an alteration of a government obligation, and would, in effect, render it a falsely made certificate or obligation within the purview of section 148 of the Penal Code and would constitute a violation thereof."

XVI.

The trial court erred in charging the jury as follows:

“So if one should erase the registration number from the face of the stamp, or the owner’s name from the certificate, with the intent to defraud, he would be guilty of an alteration of such certificate, and would commit the offense denounced by section 148.”

XVII.

The trial court erred in charging the jury as follows:

“I instruct you, however, that the statement made by Rossi in giving evidence (before the grand jury) is not to be so disregarded by you. There is evidence tending to show that Rossi appeared before the grand jury voluntarily and of his own accord, and, although warned that whatever statement he might make would be used in evidence against him, he, notwithstanding, gave such evidence without insisting upon his immunity. The evidence, therefore, of Mr. Young, the foreman of the grand jury, was competent and pertinent to prove the admissions of Rossi with reference to the stamp transactions, and you are to regard these admissions for whatever tendency they may have, if any, to show Rossi’s connection with the alleged conspiracy.”

XVIII.

The trial court erred in charging the jury as follows:

“You will inquire whether the stamps were stolen, and if so, whether by either of the defendants. And in this relation I may say to you that the possession of recently stolen property affords a strong inference that the property was stolen by the person having it in his possession.”

XIX.

That the trial court erred in charging the jury as follows:

“Now, gentlemen of the jury, the first question that you propound is the following: Does a stamp simply by being removed from a certificate, said certificate not being registered, become an altered stamp?

“To that I answer, that if the certificate has a stamp attached and the name of the party written upon the certificate, and the stamp thereafter has been removed with intent to defraud, then the defendant would be guilty whether the certificate or stamp was registered or not.”

XX.

That the trial court erred in charging the jury as follows:

“The next question you ask is this: If defendants thought at the time that they were handling stolen stamps, but did not know they were altered registered stamps, could we find them guilty on this indictment?

“My answer to that is that if the defendants were handling these stamps knowing them to be stolen, and they handled them with intent to defraud the United States, then they would be within the purpose of this indictment.”

XXI.

That the trial court erred in refusing to give the jury the following instruction:

“I also call Your Honor’s attention to an instruction that I think might be misunderstood. Your Honor stated at the outset that these defendants are not on trial for the substantive offenses themselves. That is, that they are not on trial for receiving altered obligations or having in possession altered obligations, or passing altered obligations, but they are charged with conspiring to have these things and to do those things; but that they may consider the admissions and the demeanor of the defendants. I think that is a little confusing, in that it is my contention that the proof of a conspiracy cannot be predicated upon admissions of the defendants themselves as to any part in their transaction; that the proof of conspiracy must be established beyond an admission.”

XXII.

That the trial court erred in refusing to give the jury the following instruction:

“If you believe that the confession made by Mr. Rossi to Mr. Young, foreman of the grand jury, was traceable to the hope inspired by the assurances made by Mr. Walters and Mr. Glover in the first instance; and that Mr. Rossi at the time was relying upon such assurances when he made the confession to Mr. Young, then such confession is inadmissible and you should disregard it. It is not material whether Mr. Young knew that Mr. Glover had inspired a hope in the mind of Mr. Rossi provided there was a casual connection between the hope aroused and the confession. The fact that the confession was not made to the officer arousing that hope is immaterial. When an improper influence has been exercised it becomes the duty of the government to show that it has been removed before this subsequent confession can be held admissible.”

XXIII.

The trial court erred in refusing to give the jury the following instruction:

“The basis of the jurisdiction of the United States over these offenses is that it involves an obligation or other security of the United States which is alleged to have been altered, forged, or counterfeited. If the instrument alleged to have been so altered, forged, or counterfeited is not an obligation of the United States, then there has been no violation of these counterfeiting statutes. Before you can find, therefore, that the de-

defendants conspired to violate any of these statutes you must first of all determine to your satisfaction and beyond a reasonable doubt that the scheme alleged to have been devised by the defendants was one that had in contemplation the dealing in altered, forged, or counterfeited obligations of the United States. If the conspiracy did not have any such object in contemplation, then the scheme could not possibly have resulted in a violation of any of these statutes. In other words, if the defendants conspired to commit some offense that is not denounced by these specific statutes, or any of them, to-wit, sections 148, 151 and 154, then you cannot find any of these defendants guilty on this charge, and your verdict would under those circumstances have to be that of not guilty, so far as this particular charge is concerned."

XXIV.

The trial court erred in refusing to give the jury the following instruction:

"When and under what circumstances can the instruments alleged in the indictment to have been the subject of the alteration be considered as the obligations of the United States? I instruct you that a United States War Savings Stamp becomes an obligation of the United States only when it has been affixed to a United States War Savings Certificate and the name of the owner has been written upon that certificate. It is only when such a certificate is so made up and com-

pleted that it becomes an obligation of the United States within the meaning of the counterfeiting statutes herein involved."

XXV.

The trial court erred in refusing to give the jury the following instruction:

"If you should find, therefore, after a review of all the testimony in this case, that the prosecution has not convinced you beyond a reasonable doubt that the object of the conspiracy was to alter or forge such obligations of the United States, as I have defined them, then it would be your duty to return a verdict of not guilty as to such defendants you find had not so conspired. In other words, if certain of the defendants entered into a conspiracy, assuming that there was a conspiracy, merely to buy, receive, possess, or sell loose war savings stamps, then they could not be said to be guilty of this offense, as such war savings stamps, considered separately, are not obligations of the United States."

XXVI.

That the trial court erred in refusing to give the jury the following instruction:

"It is further charged in the indictment that the defendants conspired to forge and alter obligations of the United States by removing a certain serial or identification number from the face of the stamps. Upon that

point I instruct you that it is not an alteration or forgery of a United States war savings certificate, assuming that it was fully and completely made up so as to constitute an obligation of the United States, to erase or remove the serial number therefrom, as such serial number is not a material element of the obligation. The obligation is just as potent in the hands of the holder without as with the serial number. It is only when the certificate has been duly registered that the removal of the registration number therefrom would constitute a forgery. It is not charged in the indictment, however, that the conspiracy included the scheme of altering stamps or certificates that had been registered. That being the case I instruct you that under this indictment there has been no proof that obligations of the United States had been altered by the removal of the registration number therefrom."

XXVII.

That the trial court erred in refusing to give the jury the following instruction:

"I also instruct you that it is unfair and improper to consider anything you may have heard or read concerning this case outside this court room to influence you in arriving at your verdict. Your verdict should depend upon the sworn testimony that you have heard here, and upon that testimony only. It appears that a number of articles were written concerning this case which might

possibly have a tendency to detract from the testimony as here given under oath. If you have heard or read anything about this case outside this court room it is your duty under your oath to disregard it entirely. It is not only unfair to the defendants that you should entertain any prejudice against them for something that you may have heard or read outside this court room, but it is likewise a contempt of court to publish such matters of a pending trial. I therefore remind you of your duty under your oath and appeal to your conscience to consider only the evidence given in this case, and none other. If, therefore, you honestly feel that the evidence as presented in this case is insufficient to convince you beyond a reasonable doubt of the guilt of the defendants, then it is your duty to return a verdict of not guilty, notwithstanding the fact that if you considered the statements in the newspapers your decision would have been otherwise. I also instruct you that your verdict must be based upon the guilt or innocence of these defendants on this charge, and none other, no matter what your opinion may be concerning their guilt upon any other charge or offense. If, therefore, you honestly feel that the evidence as given in this case is insufficient to convince you beyond a reasonable doubt of the guilt of the defendants in conspiring to violate the counterfeiting statutes, then it is your duty to return a verdict of not guilty, notwithstanding you might believe them guilty of some other offense."

XXVIII.

That the trial court erred in refusing to grant defendant's motion to strike out the testimony of P. A. Young as to admissions made by the defendant before him and the grand jury, on the ground that it was an involuntary statement made and induced by the promise of immunity.

XXIX.

That the trial court erred in denying the motion for a new trial on behalf of the defendant in this, to-wit:

(a) That the record fails to show that the defendant has pleaded to this indictment as required by law, and, therefore, no issue being had there was nothing for the jury to try;

(b) That the defendant was prejudiced at the outset of the trial and during the course of the trial by articles appearing in newspapers then and there published and generally circulated in the City of Portland, Oregon, where said cause was being tried, which said articles were of such a nature as to arouse public prejudice against this defendant, and were thereby calculated to prejudice the jury against him;

(c) That the defendant was prejudiced by remarks of the court made during the course of the trial.

XXX.

That the defendant did not have a fair and impartial trial by reason of the prejudice aroused against him during the course of the trial by articles appearing in newspaper published and circulated in the City of Portland, where said cause was being tried.

XXXI.

That the defendant did not have a fair and impartial trial by reason of the following prejudicial remarks of the court made during the course of the trial, to-wit:

“During the examination of William Glover, a witness for the defendant and a former United States secret service operative, when questioned by the attorney for the defendant, testified as follows:

“Q. Did you come to me and ask me to put you on the stand?

“A. I did, sir, night before last.

“Q. Why did you ask that?

“A. When I saw—the reason for asking you to put me on the stand—I saw that Mr. Veatch was not going to put me on the stand so I could explain away some of this newspaper notoriety that has been filtering here for the last six months; so I came to you and requested you to give me a chance to get the truth before this court and my friends here.

“Q. This was a personal request of me as a friend of yours?

“A. Yes, absolutely.”

Whereupon the court intervened as follows:

“COURT: Who is your friend?

“A. Well, I have friends all over the coast, your honor.

“COURT: I thought you meant Rossi.”

XXXII.

That the trial court erred in denying and overruling the motion of the defendant in arrest of judgment in this, to-wit:

1. That the said indictment is duplicitious in that two offenses are charged or attempted to be charged therein;

2. That the said indictment does not state facts sufficient to constitute an offense or a crime against the laws of the United States;

3. That no issue has been joined herein in that the defendant has never pleaded in this indictment; and that because of which said errors in the record herein, no lawful judgment can be rendered by the court upon the record in this case.

XXXIII.

That the trial court erred in entering judgment against the defendant, upon the ground that he had never pleaded to the indictment, and that therefore no issue had been joined.

XXXIV.

That the trial court erred in entering judgment against the defendant upon the verdict in this case.

ARGUMENT.

1. INSUFFICIENCY OF INDICTMENT.

The grounds upon which the demurrer is predicated are two-fold: (a) That the indictment fails to state sufficient facts to constitute an offense against the laws of the United States; and (b) that the indictment is duplicitious.

(a) The indictment which is in one count purports to charge all the defendants named therein with a conspiracy to violate Sections 148, 151 and 154 of the Penal Code, and to defraud the United States in violation of Section 37 of the Penal Code. The particular statutes the defendants are alleged to have conspired to violate are as follows:

Section 148. Whoever, with intent to defraud, shall falsely make, forge, counterfeit, or alter any obligation

or other security of the United States shall be fined not more than five thousand dollars and imprisoned not more than fifteen years.

Section 151. Whoever, with intent to defraud, shall pass, utter, publish or sell, or attempt to pass, utter, publish, or sell, or shall bring into the United States or any place subject to the jurisdiction thereof, with intent to pass, publish, utter or sell, or shall keep in possession or conceal with like intent, any falsely made, forged, counterfeited, or altered obligations or other security of the United States, shall be fined not more than five thousand dollars and imprisoned not more than fifteen years.

Section 154. Whoever shall buy, sell, exchange, transfer, receive, or deliver any false, forged, counterfeited, or altered obligation or other security of the United States, or circulation note of any banking association organized or acting under the laws thereof, which has been or may hereafter be issued by virtue of any act of Congress, with the intent that the same be passed, published or used as true and genuine, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

In so far as it relates to the conspiracy part thereof which, of course, is the gist of the offense, the indictment in substance charges that the defendants conspired to alter certain obligations of the United States, to-wit: U. S. War Saving certificates and U. S. War Saving certificate stamps, by removing the stamps from the certificates and by erasing from the face of the stamps certain registration and identification numbers; the conspiracy further contemplated a scheme to buy, possess and sell these instruments so altered with intent to defraud the United States.

The authority for the contention of the Government in claiming that the instruments in question are obligations of the United States, and therefore subject to the protection of counterfeiting statutes which the defendants are said to have conspired to violate, is found in Section 6 of the Act of Congress of September 24, 1917, (40 Stat. 288, 291) which reads as follows:

“War Savings Certificates.—In addition to the bonds authorized by section one of this Act and the certificates of indebtedness authorized by section five of this Act, the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purpose of this Act and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor, at such price or prices and upon such terms and conditions as he may determine, war saving certificates of the United States, on which interest to maturity may be discounted in advance at such rate or rates and computed in such manner as he may prescribe. Such war saving certificates shall be in such terms and conditions, and may have such provisions for payment thereof before maturity, as the Secretary of the Treasury may prescribe. Each war saving certificate so issued shall be payable at such time, not exceeding five years from the date of its issue, and may be redeemable before maturity, upon such terms and conditions as the Secretary of the Treasury may prescribe. The sum of such war saving certificates outstanding shall not at any one time exceed in the aggregate \$4,000,000,000. It shall not be lawful for any one person at any one time to hold war saving certificates of any one series to an aggregate amount exceeding \$1,000. The Secretary may, under such regulations and upon such terms and conditions as he may pre-

scribe, issue, or cause to be issued, stamps to evidence payments for or on account of such certificates."

It will be here noted that it is not claimed that the defendants conspired to violate this statute last quoted, but that the defendants conspired to violate the herein-before described counterfeiting statutes.

It is the contention of the defendant that the indictment is insufficient for the following reasons:

(1) That neither a U. S. War Savings Certificate nor a U. S. War Savings Certificate stamp is an obligation or other security of the United States.

(2) That the alleged alteration contemplated by the conspiracy is not an alteration within the meaning of the counterfeiting statutes;

(3) That the indictment fails to allege that the instruments in question were registered or that the scheme contemplated the alteration of registered U. S. War Savings Certificates, and therefore the alteration could in no wise perpetrate a fraud upon the United States.

(4) That the indictment fails to allege wherein the defendants disobeyed any regulations promulgated by the Secretary of the Treasury, and that in any event the transgression of any such regulations is not a criminal offense unless made so by the statute itself.

(1) It is elementary that before the United States courts can be said to have jurisdiction in counterfeiting cases, the instrument involved must be an obligation or other security of the United States, and the first point we raise is that there is nothing in the indictment from which the court can say that U. S. War Savings Cer-

tificates or U. S. War Savings Certificate stamps, considered separately and individually, are such obligations of the United States as to render them subject to the protection of the counterfeiting statutes. As a matter of fact the only instruments which the plan or scheme contemplated being altered were the U. S. War Savings Certificate stamps; i. e., by their removal from the certificates to which they had been attached and by the erasure of certain identification numbers appearing thereon.

It is our contention that the stamp itself is insufficient to constitute an obligation within the contemplation of this Act. It will be observed that the act authorized the issuance of United States War Saving *Certificates*, and that stamps merely evidence the payments made on account of such certificates; furthermore, by a regulation duly and lawfully promulgated by the Secretary of the Treasury, under date of December 18, 1918 (Department Circular 128), it is specifically provided:

“A United States War Saving Certificate, series of 1919, will be an obligation of the United States when, and only when, one or more United States War Saving Certificate Stamps, series of 1919, shall be affixed thereto.”

It is, therefore, quite apparent that so far as war saving stamps and certificates are concerned, Congress, in passing the law, and the officers charged with the enforcement thereof, decreed that separate and alone,

neither represented an obligation of the United States, but that jointly, the certificate with the stamps thereon, constituted such an obligation.

As the indictment in effect charges that the stamps alone constituted the obligation which was said to have been altered, forged and counterfeited, when the law and regulations under which the stamps were issued specifically provides that, that in itself it does not constitute an obligation of the United States, the indictment therefore does not properly state an offense.

In the case of *DeLemos vs. United States*, 91 Fed. 497, the Circuit Court of Appeals for the Fifth Circuit directed the quashing of the indictment purporting to charge the forging of an endorsement of a Government draft, on the ground that the indictment failed to charge that the genuine draft with the forged endorsement constituted together a forged obligation of the United States.

So, in the case at issue, the pleader should have alleged that the genuine or altered certificate, with the alleged altered stamp constituted together an obligation of the United States that had been forged or counterfeited. This he has failed to do.

Furthermore, before a United States War Savings certificate and stamp jointly could be considered an obligation of the United States, the certificate must be complete. That is to say, it must bear the name of the owner

thereon, which must be written upon the certificate at the time of the issuance thereof. No where in the conspiracy charged in the indictment is there any such allegation from which the court could say that the certificate was a completed one, so that it, together with the stamps attached thereto, constituted an obligation of the United States.

Department Circular No. 94, bearing date of November 15, 1917, declares that "No War-Saving Certificate will be issued unless at the same time one or more War-Savings Certificate Stamps shall be purchased and affixed thereto, but no additional charge will be made for the War-Savings Certificate itself. The name of the owner of each War-Savings Certificate must be written upon such certificate at the time of the issue thereof."

So far as the bare certificate itself is concerned, our assertion that it is a mere worthless piece of pasteboard will not be seriously disputed. Plainly it only becomes important when it bears the name of the owner, and when the stamp, which after all, is the thing of value, is attached thereto. This was in effect the ruling of Judge Wolverton when called upon to determine the sufficiency of an indictment against this defendant for the same substantive offenses, which were made the basis of the conspiracy indictment. In *U. S. vs. Rossi*, 266 Federal Reporter, at page 622, the learned judge held:

“In the light of the act and the department regulations, provision is made for the issuance of two kinds of documents, namely, War-savings Certificates and War-savings Certificate stamps; but these documents become obligations of the United States only when a stamp or stamps shall have been affixed to the certificate and the name of the owner or owners shall have been written upon the certificate. Such certificates, when so made up and completed, it may be confidently affirmed, are obligations or securities of the United States within the purview of sections 148, 151, and 154 of the Penal Code. Separately considered, neither the stamp nor the certificate can be deemed such an obligation.”

(2) Again we call attention to the palpable insufficiency of the indictment purporting to charge a conspiracy to alter obligations of the United States, as condemned by the counterfeiting statutes, when there is nothing in the indictment from which the court could say that the instruments in question were altered or that they could be altered by the means alleged so as to make it an offense against the counterfeiting statutes, which this defendant is said to have conspired to violate.

As previously noted, the only instruments said to have been altered or designed to be altered were the United States War Savings Stamps. Assuming for the sake of argument, a premise we do not concede, that a United States War Savings Stamp standing alone is

an obligation of the United States within the meaning of the act under which it was issued, it would further be necessary before the so-called counterfeiting statutes can be said to have been violated that such stamp had in fact been altered by the means alleged in either of the ways charged, that is, by the removal of the stamp from the certificate to which it had been attached or by the erasure of the serial or identification number from the face of the stamp. It is our contention that in neither instance would such an act constitute such an alteration as denounced by the counterfeiting statutes.

As to the first charge that the removal of the stamp from the certificate to which it had been attached was an alteration: In the case of *U. S. vs. Howell*, 11 Wallace 432, the Supreme Court said, "The use of the words 'false, forged and counterfeited' in the statutes imply therefore, when applied to any of the obligations of the Government, that it purports to be such an instrument, but is not genuine or valid."

The Act of September 24, 1917, authorizing the issuance of these stamps, does not declare that the removal of same from the certificate to which they had been attached, a crime, nor do the regulations themselves prohibit it. It must, therefore, be assumed that the Government contends that the counterfeiting statutes can be invoked on the theory that the act of removing the stamps from the proper certificate, rendered such stamps worthless and valueless in the hands of the holder.

It will not be denied that the certificates alone are without any value and are gratuitously given by the Government for the personal convenience of the owner as a holder for such stamps merely; it would, therefore, appear that the stamps alone are the unit of value, and as such may be alienated, sold or disposed of as any other property. The Government, after the original purchase of these stamps, can claim no property interest in the stamps; by the same token, the defendant could properly purchase them from the original purchasers. Being the owners of these stamps the defendants could change them from one certificate to another, provided the Government did not have to pay more than it was obligated to pay on these stamps. There is no contention that the value of the stamps was in any way affected by the removal of these stamps to other certificates.

To hold that the removal of the stamp from the certificate constituted an alteration would in effect be equivalent to holding that the stamp itself was valueless, and thereby to destroy all property value in the loose stamps or in those that had been transferred from one pasteboard certificate to another.

Such was the Government's contention in an indictment recently brought by it in the Southern District of New York. One Sacks was indicted in that district for violation of the counterfeiting statutes in that he altered a War Savings Certificate by removing the stamp therefrom. Motion was made to quash the in-

dictment on the ground that such act did not constitute an alteration within the meaning of the counterfeiting statutes. In view of the dearth of reported cases upon the subject of War Savings Stamps, and the importance of this decision upon the grounds involved herein, a full copy of the memorandum decision quashing the indictment is set out in the appendix. District Judge Hough in disposing of the particular question now raised said:

“The statement of the prosecutor in support of especially Section 14 of Circular 108, is that a stamp in and of itself is nothing; it has no value except as a receipt.

“From this flows the assertion that when that receipt is affixed to a pasteboard, which by itself has no value whatever, the two things put together become an obligation of the United States, not dissimilar from a bond or a treasury note and that the quality or assignability or transferability is denied to it.

“It is said even if the stamp *per se* worthless may pass from hand to hand, it becomes when affixed to the certificate like the ink upon the note, and its removal is as much an alteration as would be the erasure of that ink.

“To me this is an ingenious but fallacious arrangement of words.

“To deny value to the War Saving stamp is against common sense and contradictory to a course of business vigorously pursued for the last few years, which has succeeded in forcing these stamps into the possession of people whom it is sarcasm to call ‘investors,’ and who would be surprised beyond measure to be told that their stamps had no ‘value.’

“When Congress authorized the issuance of ‘stamps to evidence payments for on account of such certificates,’ and did not deny to the stamp holders the right of trans-

fer, such right existed. The Treasury has sought to take it away by making the certificates non-transferable. Assuming that power exists to prohibit transfer of the certificates, I am wholly unable to perceive that there is any Congressional authority for the Secretary's prohibiting the transferability of the stamps affixed to the certificates.

"Nowhere is it said that any particular stamp shall evidence a payment on any particular certificate.

"This I think is the gist of the matter: Is a regulation which as interpreted, in terms takes away a property right in a manner not specifically authorized by statute, a valid rule? I cannot persuade myself that such is the case.

"Congress has certainly not done that which was held sufficient to make a crime of rule violation in *United States vs. Grimaud*, 220 U. S. 506. The *Smull* and *Morehead* cases, *supra*, do I think hold that where the manner of obtaining a grant is committed to a department, that department may regulate the procedure to obtain the same, and if a violation of that procedure runs counter to any criminal statute of Congress, then violation of the regulation is punished by the statute, and so within the *Grimaud* case, *supra*.

"But the prohibition against transfer of stamps affixed or unaffixed is far more than a procedural regulation. A stamp is a thing of value, bought and paid for, and to deprive it of the quality of assignability is a diminution of lawfully existing property rights for which in my judgment congressional action alone will suffice."

This reasoning of Judge Hough finds approval in the United States Supreme Court in the case of *United States vs. Eaton*, 144 U. S. 677, wherein it was held that the violation of a regulation made by the head of a department for carrying into effect a law of the United

States cannot be made a criminal offense, unless the statute so provided. In that case the Court said:

“Regulations prescribed by the head of departments under authority granted by Congress, may be regulations prescribed by law so as lawfully to support Acts done under them and in accordance with them, and may in themselves have in a proper sense, the force of law; but it does not follow that a thing required by them is a thing so required by law as to make the neglect to do the thing a criminal offense in a citizen where the statute does not directly make the neglect in question a criminal offense.”

As to the Second charge: That the erasure of the registration or identification number from the face of the stamp constituted an alteration:

It is elementary that the alteration, forgery or counterfeiting in order to be criminal must be material and must be capable of effecting a fraud. It follows, therefore, that an immaterial change, and one which if true, does not alter its effect or make it speak in a different legal language, or in anywise decrease, diminish or discharge the obligation, does not amount to forgery or counterfeiting.

The offenses here charged purport to be that of forgery and the decisions in forgery cases are therefore applicable.

“In order that an alteration may constitute forgery, it is essential that it be material.”

19 Cyc. 1375.

“A material alteration is one which changes the legal effect of an instrument, while an immaterial alteration has no such effect.”

1 R. C. L. 966.

“A material change or alteration of an instrument is one which causes it to speak a language different in legal effect from that which it originally spoke.”

2 C. J. 1173.

“An alteration is an act done upon an instrument by which its meaning or language is changed. If what is written on or erased from an instrument has no tendency to produce this result, or to mislead any person, it is not an alteration.”

2 C. J. 1172.

“The materiality of an alteration is a question of law for the court to determine.”

Notes to *Wilson vs. Hayes*, 4 L. R. A. 197.

“Nor is the intent with which an alteration is made to be considered in determining its materiality and its consequent effect upon the validity of the instrument altered. An alteration of an instrument may be considered immaterial if it does not vary the meaning of such instrument in any essential particular.”

1 R. C. L. 969.

Bearing these fundamental principles in mind as to what constitutes a material alteration in order to make out a case of forgery, we observe that the indictment purports to charge such forgery upon the theory that the defendants erased a certain serial number appearing on the face of the stamp, which, for the purpose of this argument, we shall assume is an obligation of the United States. There is no contention or allegation that the value of the stamp was thereby in any way enhanced, di-

minished or discharged. We therefore submit that an essential ingredient to the offense of forgery is lacking.

In the case of *People vs. Levinger*, 1912 D. Ann. Cases 239, it was held that the alteration of certain figures on a check which did not change the legal effect of the instrument was not a material alteration and did not constitute a forgery. Under the notes to this case appears the following:

“Forgery is the false and fraudulent making or altering of an instrument which would if genuine, impose a legal liability in another or change his legal liability to his prejudice. An alteration, to amount to forgery, must be such as to make it speak a language different in legal effect from that which it originally spoke, or which carries with it some change in the right, interest or obligations of the parties to the writing. It follows that an immaterial change—a change which if true would not affect the legal liability of the parties in an action,—to the instrument would not amount to forgery.”

In the case of *State vs. Henry*, 54 L. R. A. 794, it is said:

“As the crime in this case is charged to have been committed by means of an alteration of a genuine written instrument. It must, therefore, be clearly made to appear that the alleged alteration of the genuine document was material and that its legal effect was thereby in some degree varied or changed to the prejudice of some person having or acquiring rights therein for the law is well settled that forgery cannot be sufficiently predicated upon an immaterial alteration of a written instrument.”

Under the note to *Citizens National Bank vs. Williams*, 35 L. R. A. 467, is found the following:

“The alteration of a serial number on a negotiable bond or bank note is not a material alteration. The test is whether the alteration makes the instrument a new note and not whether the new note was more or less beneficial to the obligors.”

A discussion of this subject is found in 1 R. C. L. 967, and the following found therein is authority for our contention:

“The test as to materiality: That is a material alteration which so changes the terms of the instrument as to give it a different legal effect from that which it originally had, and thus work some change in the rights, interests or obligations of the parties. It is the effect of the act upon the instrument, and not the particular manner in which it is done, that is material, whether it be by interlineation, addition or substitution, change of words, erasure, or by cancellation of some material provision thereof.”

In the United States Courts it has been held that the mere changing of serial numbers on instruments such as bank notes or a negotiable bond is not considered material at least where the law does not require such instruments to be numbered. (1 R. C. L. 983.)

The decisions of the United States Courts rests upon the ground that the number put on a negotiable instrument is not an integral part of it but, like a vignette or other marking, only serves to identify, and if the instru-

ment is otherwise fully identified a change in the number is immaterial.

The case of *Wylie vs. Missouri Pacific Ry. Co.*, 41 Fed. 623, is a Federal authority, in point. This was an action brought to recover money due on certain bonds that had been stolen from the plaintiff. The numbers on the bonds had been altered by erasure and substitution of other numbers and had thereafter gotten into the hands of a bona-fide holder. The case resolved itself in a single question of law: Whether the alteration of a serial number on a negotiable bond was a material alteration? If it was, it discharged the obligation in the hands of the innocent purchaser and the plaintiff would thereby be enabled to recover; but the court held that the alteration was not material and that plaintiff could not recover. In his opinion the court said:

“The number upon a note, check or bond is one intended to serve the convenience of the maker or owner in distinguishing it from others of a similar tenor; that the serial numbers were a matter extrinsic to the contract itself, and for that reason it might well be considered, that the alteration of the numbers is not a material one.”

The court in its opinion quoted with approval a number of supporting decisions, among them that found in the case of *Com. vs. Bank*, 98 Mass. 12, wherein the court in discussing the argument that the numbers on the bonds constituted a part of the instrument, said:

“It is a part of the identity of the paper, but not of

the contract any more than any device, picture or impression upon it would be. The presence or absence of any number does not change the written contract in substance or in form, nor effect the proof of it. We think the change of the numbers was not a material alteration of the bond."

Also the court quoted the decision of the case of *City of Elizabeth vs. Force*, 29 N. J. E. 587:

"The number of a bond is put upon it as a mark denoting, for the convenience and protection of the maker, that it is one of a series, but such mark does not enter into or in any way affect the agreement embodied in it. The purchaser has nothing to do with it and need give it no heed."

In the case of *Com. vs. Hayward*, 10 Mass. 34, it is said:

"An alteration of a bank bill, in order to be criminal, must be such an alteration as effects the apparent value of the bill."

Finally, we submit the opinion of Judge Wolverton in the case of *United States vs. Ross*, *supra*, when these authorities were called to his attention upon this point:

"I am of the opinion that it is not an alteration or forgery of such War-saving Certificates, fully made up, to erase or remove the serial number thereof, because such serial number is not a material element of the obligation. The obligation is just as potent in the hands of the holder without as with the serial number. But if the certificate had been registered, as provided by the departmental regulations, and given a registration number, it would, without question, constitute a forgery.

“The purpose of affixing the number or numbers is for identification of the obligation at the post office where payable and for the protection of the Government, to ward against payment to the wrong person, or double payment, as well as for the protection of the lawful owner and holder of the certificate or certificates.

“And those counts purporting to charge the defendant with having erased or effaced the registration and identification number, to-wit, number 50819, are also bad, in not having alleged by appropriate averments, that such certificates had been previously registered.”

Here the indictment makes no charge that the conspiracy contemplated a scheme of dealing in registered stamps, nor that the stamps involved were registered, but merely refers to the number which is said to have been erased, to-wit: 50819, as the registration or identification number. It will be conceded, and the Bill of Exceptions so demonstrates, that that number is the regular post office serial number under which the Scio post office operates, and is not the registration number, therefore, under the indictment and the proof, it appearing that the number 508919 is merely the serial number, the removal of which in no wise affects the value of the stamp itself, it must follow, if the above authorities are decisive, that such a removal does not constitute a material alteration within the meaning of the counterfeiting statutes.

3. It is further contended that as the stamps in question were not registered the indictment fails to allege any facts from which the court could say that the

alteration of such stamps by the means alleged could in any possible manner perpetrate a fraud upon the United States.

Treasury Department Circular No. 94, which provides for the registration of War Savings Stamps, declares:

“Unless registered the United States will not be liable for the payment in respect of any certificate or certificates made to a person not the rightful owner thereof.”

It must therefore follow that if the stamps in question were not registered, and this plainly appears from the indictment and the proof, that no dealing by the defendants with such non-registered stamps could involve a fraud upon the United States and in so far as this transaction is concerned the defendants could not be indicted for same under Section 37 of the criminal code.

In connection with this assertion we call attention to the fact that no where in the indictment is it alleged that the conspiracy included any pecuniary loss to the United States directly or indirectly.

If it be held that a War Savings Stamp is property in the ordinary sense of the word and may pass from hand to hand like any other similar piece of property, and if it be held that the removal of the serial number from the face of the stamp is not a material alteration, how could it be argued that any fraud could possibly

be perpetrated upon a department of the Government which only obligates itself to the rightful owner of such stamps when and only when they have been duly registered.

The purpose of the act of September 24, 1917, Section 6, as stated in the title was to obtain a revenue. This purpose was effectuated when the stamps were purchased. The Government had acquired the desired revenue from the sale of these stamps and became obligated to pay the value of these stamps only to the holder thereof. It was not liable over again to the lawful owner unless as before stated the stamps had been duly registered. As far as the Government was concerned it lost no property or rights by the transfer of these stamps from one party to another, or even by disposition of these stamps through dishonest channels so long as the parties in dealing with them did not materially alter the same so as to constitute a forgery of a Government obligation. It is submitted, therefore, that by the mere removal of the identification number from the face of a non-registered stamp, not amounting to a material alteration thereof, the Government could not possibly be defrauded thereby. The Department had already received the revenue therefrom, and assuming that the charge in the indictment was true, it would not have had to pay a single cent more in redeeming the stamp from a dishonest holder of such stamps than it would have had to pay to the lawful owner thereof.

4. It may be contended, however, that the alteration of these obligations were such as might be capable of perpetrating a fraud upon the United States because of non-compliance with certain regulations of the Secretary of the Treasury; that regulations had been promulgated prohibiting alienation of these stamps and certificates from the original purchaser, and that the acquisition of these stamps by parties other than the original purchaser was prohibited.

In the first place, there is no allegation in any count of these indictments that the defendants in doing the things alleged had failed or neglected to comply with any regulation of the Treasury Department; that not having pleaded the non-compliance with certain regulations, nor when they were promulgated, nor that they were known to the defendants, nor that they were in effect at the time of the alleged violation, the Government cannot now urge that the facts embrace a non-compliance of such regulations.

Even in the event that such regulations had been properly pleaded, it is contended that the Act of September 24, 1917, nowhere confers upon the Secretary of the Treasury the power to declare unlawful a violation of any of such regulations so promulgated under the authority of said statute.

The words of the Act of Congress of September 24, 1917, Section 6, in this connection are that "it shall not

be lawful for any one person at any one time to hold War Savings Stamps to an aggregate amount exceeding \$1000," and the further provision "The Secretary of the Treasury may under such regulations and upon such terms and conditions as he may prescribe issue stamps to evidence payment for or on account of such certificates."

It is then declared by Department Circular No. 94 that "War Savings Certificates are not transferable and will be payable only to the respective owners named thereon," except in the events not now material.

The statute in question does not in express terms make it a crime to alienate or acquire by purchase War Savings Stamps and War Saving Certificates. If it is held to be unlawful, it can only be so held by virtue of clauses in the statute conferring power on the Secretary of the Treasury to make terms and conditions. If this power so conferred is held to be broad enough to make it criminal to violate any rule thereafter to be made by the Secretary of the Treasury under such statute for the carrying out of the purposes of the statute, it is void for the reason that it would be an attempt by Congress to delegate its authority to an executive officer. The reason is obvious. To hold an alleged violation of these regulations as sufficient to sustain the indictment would be equivalent to holding that the clauses conferring power to impose terms and conditions and to regulate also make it a crime to violate such regulations.

Such a construction would make of the enabling clauses of the Act, in substance and effect, a delegation of legislative power to an administrative officer.

In *U. S. vs. Moody*, 164 Federal, 269, the court said:

“It is elemental that Congress cannot delegate legislative authority to an executive officer or board and that accordingly such executive officer cannot amend or extend a law of Congress so as to make an act unlawful which but for the action of the executive officer, would be lawful. In other words that a sufficient statutory authority must exist for declaring an act or omission unlawful.”

In *U. S. vs. Eaton*, 144 U. S. at page 688, the court said:

“Regulations prescribed by the President and by heads of departments, under authority granted by Congress may be regulations prescribed by law, so as lawfully to support acts done under them and in accordance with them and may thus have, in a proper sense, the force of law; but it does not follow that a thing required by them is a thing required by law as to make the neglect to do the thing, a criminal offense in a citizen, where a statute does not distinctly make the neglect in question a criminal offense.”

It is well stated in the case of *U. S. vs. Van Wert*, 195 Fed. 974:

“Unless the act charged to have been done by the defendant is a violation of some Act of Congress * * * or of some departmental rule or regulation authorized by Congress, the violation of which is declared by

Congress to be an offense, no crime has been committed."

It must, therefore, be conceded that a violation of a departmental regulation is not a criminal offense unless Congress distinctly makes it so. This Congress has not done except in the one instance hereinabove stated, which does not cover any of the acts charged against these defendants.

It would be a very dangerous principle to hold that an act prescribed by the Secretary of the Treasury as a regulation under the Act of September 24, 1917, and for carrying it into effect, could be considered as "unlawful" in such a manner as to become a criminal offense punishable under the conspiracy statute, particularly when the Act does not so prescribe. In Congress intended to make it a criminal offense, it would have done so distinctly, in connection with the enactment of the Act of September 24, 1917.

The Act does not expressly forbid the sale of war savings stamps by the original purchaser thereof to other persons. It would seem that it is no crime to purchase or sell War Saving Certificates, within the limitations thus laid down. As Congress did not specifically forbid alienation and acquisition of War Savings Certificates, nor declare the sale and purchase of such securities by and between citizens to be unlawful or a crime, and since Congress could not delegate the au-

thority to legislate in respect to these securities to the Secretary of the Treasury, the regulations in question, in so far as they would make the purchase and sale of these securities by and between the lawful owners and other citizens a criminal offense, are in the nature of an amendment to the statute and a limitation of the rights of a citizen under and in respect to the enabling statute and are therefore void. The contention here submitted is upheld by District Judge Hough in the case of *U. S. vs. Saks*, *supra*, wherein he said:

“This I think is the gist of the matter: Is a regulation which as interpreted, in terms takes away a property right in a manner not specifically authorized by statute, a valid rule? I cannot persuade myself that such is the case.

“Congress has certainly not done that which was held sufficient to make a crime of rule violation in *United States vs. Grimaud*, 220 U. S., 506. The *Smull* and *Morehead* cases, *supra*, do I think hold that where the manner of obtaining a grant is committed to a department, that department may regulate the procedure to obtain the same, and if a violation of that procedure runs counter to any criminal statute of Congress, then violation of the regulation is punished by the statute, and so within the *Grimaud* case, *supra*.

“But the prohibition against transfer of stamps affixed or unaffixed is far more than a procedural regulation. A stamp is a thing of value, bought and paid for, and to deprive it of the quality of assignability is a diminution of lawfully existing property rights for which in my judgment congressional action alone will suffice.”

In the recent case of *Keane vs. U. S.* 272 Federal 577, the Circuit Court had for consideration an indictment for conspiracy involving a scheme to defraud the United States through dealing with a post exchange, operated under certain rules and regulations of the War Department. The decisive question was whether a post exchange is such an institution as that a fraud upon the United States could arise from or be involved in any transaction concerning it. As stated by the Court:

“Plainly it will be seen that, if it is not such an institution, then no dealing by the defendant Keane with such exchange could operate as or involve a fraud upon the United States, and in so far as this transaction is concerned the defendant could not be indicted for same under section 37 of the Criminal Code above quoted.”

In reaching its conclusion that the post exchange was not such a department of the Government as would render a fraud perpetrated thereunder a fraud upon the United States, the Circuit Court said:

“It will not do to say that because the Secretary of War permits the establishment of post exchange baseball clubs and golf clubs, immediately upon the establishment of same, transaction with them or their agents are covered by this criminal section. If the Secretary of War had this power, then every new organization or association which he might permit the soldiers to organize would in its transactions with civilians come under the protection of this highly criminal law, because, if he can create new conditions, which immediately become subject to these criminal laws of the country, his action

would be tantamount to giving him the authority to enact a criminal statute." * * *

"This section, Sec. 161 U. S., only gives the heads of departments, including the Secretary of War, power to issue rules and regulations for the administration of their departments. Indeed, the power conferred by this section is administrative only, which means that the Secretary of War, if he had power to issue the regulation at all, only had power to compel or permit the soldiers to establish these post exchanges in question, but could not, in the absence of the express authority of Congress, make persons not connected with his department bound by such regulations, or subject to the pains and penalties of criminal law. If a head of a department has the power to make rules which subject classes of property to forfeiture and classes of persons to penalties, that power must be expressly given him by Congress, and well defined, so as to make his rule or regulation an act of the supreme law-making body. He will get no such power from Section 161 of the Revised Statutes.

In the case of *Oertel Company vs. Gregory*, 270 Fed. 789, there was involved the right of the Commissioner of Internal Revenue to promulgate a certain regulation for carrying out the provisions of the National Prohibition Act. The Commissioner had issued a regulation declaring that the use of the words "lager, bock or stout" was not permissible on labels for cereal beverages. The prohibition act itself had denominated the beverages subject to regulation as beer, ale and porter. It was contended that the regulation issued by the Commissioner was not authorized by the prohibition act, nor by any act of Congress. The Court sustained this contention in the following language:

"If Congress had deemed it proper to put into the Volstead or other act the language used in the new regulation, of course no objection could then have been made to it, but Congress did not do so, and in this situation the Commissioner undertook to supply what he must have supposed was a defect in the legislation. If Congress had chosen to add the words 'beer, ale, or porter,' the words 'or any synonym for same, such as 'lager, bock or stout,' the regulations might have been authorized, but in the absence of those words from the act the rules plainly established by the Supreme Court make it clear that the Commissioner could not, even with the approval of the Secretary of the Treasury or otherwise, add those words to those used by Congress in the legislation it enacted, and the attempt to do so must be held to have been unauthorized by law, and consequently not enforceable as against the plaintiff in this case. Congress, of course, could, if so desiring, have those additional words, and, better still, might also have explicitly said what words should be regarded as synonyms, and not have left it to the conjectures of each new Commissioner of Internal Revenue or Secretary of the Treasury, or other executive officers, to enforce their possibly varying views as to what should be regarded as synonymous. This power of final 'definition' is not given to the executive officers."

In U. S. vs. George, 228 U. S. 14, the Court said:

"The justification urged for the regulation was that the word 'domestic' meant household. This Court rejected the contention and decided that the regulation transcended the power of the Secretary. We said: 'If Rule 7 (the regulation involved) is valid, the Secretary of the Interior has power to abridge or enlarge the statute at will. If he can define one term, he can an-

other. If he can abridge, he can enlarge. Such power is not regulation, it is legislation.' ”

It is, therefore, respectfully submitted that there is nothing in the act of September 24, 1917, itself which makes it a criminal offense for any person not the owner thereof to deal in these War Savings Certificates and Stamps, and further, there is nothing in the act to authorize the Secretary of the Treasury to make regulations not purely of an administrative character that would render a disobedience of such rule an offense against the laws of the United States. As stated by District Judge Hough in the case of U. S. vs. Sacks, *supra*:

“The prohibition against the transfer of stamps affixed or unaffixed, is far more than a procedural regulation. A stamp is a thing of value, bought and paid for, and to deprive it of the quality of assignability is a diminution of lawfully existing property rights for which, in my judgment, congressional action alone will suffice. The department has endeavored to diminish such property rights and indeed to destroy utterly unless the right is exercised as per regulation. It does not seem to me that this is a method of carrying out the statute as written. It is additional and very drastic legislation.

(b) It is further contended that the indictment is bad for duplicity.

It will be noted that the indictment alleges in one count that the defendants conspired to commit crimes

made offenses by the laws of the United States as well as conspired to defraud the United States, being the two separate and distinct offenses condemned by Section 37 in the two sub-divisions thereof. In the case of *United States vs. Dembowsky*, 252 Fed. 894, District Judge Tuttle said:

“It is elementary that two separate offenses cannot be included in one count of an indictment.”

The question here is whether Section 37 creates only one offense which may be committed in any one of several modes specified, or does it contemplate and create several and distinct offenses? If the latter, they cannot be joined in one count of an indictment, but must be set forth in different counts. A careful examination of this indictment will show that it does not charge one transaction as a single offense committed by the different acts. It will be noted that it charges the defendant in the language of the statute with having done all the things forbidden by Section 37, and then proceeds to allege how they were done.

In *Jelke vs. United States*, 255 Fed. 275, the Court, in discussing the cases which consider the sufficiency of indictments charging a violation of Section 37, said:

“The general conclusions deducible from these cases are: The conspiracy statute creates and defines an independent crime and an offense against the statute is committed when ‘two or more persons conspire either (a) to commit any offense against the United States, or (b) to

defraud the United States in any manner or for any purpose.”

It may be contended that as the indictment properly charges the commission of at least one offense that the other allegations may be treated as surplussage, and that if the count be open to the charge of duplicity, the objection has been obviated by holding that the count properly charges one offense, and that the other allegations may be disregarded.

It cannot be said that the allegations “to defraud the United States” was surplusage. If sufficient facts are alleged to show a conspiracy to defraud the United States and the indictment does set out facts from which it would appear that the scheme in question was to defraud the United States, under such circumstance the case comes squarely within the rule laid down in the case of *United States vs. Patty*, 2 Fed. 664, where it is held that where two distinct offenses are each set out in adequate terms, an indictment is bad for duplicity, and neither allegation can be rejected as surplusage. In discussing the question of rejecting certain allegations as surplusage, the Court said:

“The difficulty with the position thus urged is that if the objection to this count can thus be obviated, I do not see why in every case where an indictment is bad for duplicity, the defect may not be avoided by the selection of one of the offenses charged, and then holding the other allegations charging distinct offenses to be merely superfluous. I do not think the difficulty can be thus

avoided. The true distinction between matters which make an indictment bad for duplicity, and that which may be treated as mere surplussage, is stated by Mr. Bishop in his first volume of Criminal Procedure, 'If an indictment describes one offense and then adds such words only as are in part sufficient to describe another, it is not, therefore, double. To be so it must set out each of the two offenses in adequate terms.' Therefore, as this count does not merely describe one offense and by inadequate allegations state in part another, so that the latter allegation may be treated as surplussage, but it does charge, in adequate terms, distinct offenses, it is, therefore, bad for duplicity."

It would also seem that the conspiracy indictment was further duplicitous in charging in one count a conspiracy to commit several distinct crimes for which different penalties are provided. In the case of *John Gund Brewing Co. vs. United States*, 204 Fed. 17, the indictment charged in one count a conspiracy to evade the payment of the internal revenue tax, and also a conspiracy to violate Section 239 of the Code, prohibiting C. O. D. shipments of liquor, the Court held that this indictment was duplicitous, as charging in the same count two distinct offenses for which different penalties are provided. In its opinion the Court said:

"These are two distinct offenses with different penalties for violations thereof. This has never been permitted."

This decision is quoted with approval in the case of *Ammerman vs. United States*, 216 Fed. 326.

II

RECORD FAILS TO SHOW ANY ISSUE
JOINED BY DEFENDANT.

It is also alleged as a ground for motion in arrest of judgment and for new trial that the defendant was never called upon to plead to the indictment, and that the record fails to show the entry of any such plea made by or in his behalf.

The Bill of Exceptions plainly certifies the facts to be:

“That upon the arraignment of the defendant in this case on the 20th day of July, 1920, the said defendant, Angelo H. Rossi, demurred to the indictment herein, which said demurrer being overruled, the cause thereafter and on the 26th day of October, 1920, came on to trial without any plea to the said indictment having been made or entered by the defendant herein.” (Trans., p. 70.)

In the face of this record, affirmatively establishing the omission of an essential element to due process of law, we submit that the verdict of the jury, not being based upon any issue before it, is meaningless and void.

Section 1698, United States Comp. Statutes (Section 1032, R. S.), provides as follows:

“When any person indicted for any offense against the United States, whether capital or otherwise, upon his arraignment stands mute, or refuses to plead or

answer thereto, it shall be the duty of the Court to enter the plea of not guilty on his behalf, in the same manner as if he had pleaded not guilty thereto. And when the party pleads not guilty, or such plea is entered as aforesaid, the cause shall be deemed at issue, and shall, without further form or ceremony, be tried by a jury."

This statute proceeds upon the principle that before a trial can be legally begun, there must be an issue to try, and that a plea by or for the accused is essential to the formation of the issue. Wherever the duty to arraign is imperative as rendered so by this statute, failure in the full performance of this duty is fatal when the record shows the failure in an Appellate Court. (Wharton Criminal Procedure, Section 1635.)

In *Crain vs. United States*, 162 U. S. 625, the Court reversed a judgment of conviction had for violation of a federal offense on the ground that the record failed to show that the defendant had pleaded to the indictment. Mr. Justice Harlan, in writing the opinion, declared that the record at the trial for a felony must affirmatively show that it was demanded of the accused to plead, and failure to show this is not a matter of form only which is cured by Section 1025 R. S., but is a matter of substance in the administration of the criminal law involving the substantial rights of the accused. Excerpts from his opinion follow:

"Until the accused pleads to the indictment and thereby indicates the issue submitted by him for trial,

there is nothing for the jury to try; and the fact that the defendant did so plead should not be left to be inferred from a general recital in some order that the jury were sworn to 'try the issue joined.' The record should be a permanent memorial of what was the issue tried, and show whether the judgment whereby it was proposed to take the life of the accused or to deprive him of his liberty, was in accordance with the law of the land. * * *

"The views we have expressed would seem to be the necessary result of U. S. Rev. Stat., Section 1032 * *

"This statute is based on the act of April 30, 1790, Section 30 (1 Stat. at L. 119), the act of March 3, 1825, Section 14 (4 Stat. at L. 118), and the act of March 3, 1835, Section 4 (4 Stat. at L. 777). It proceeds upon the established principle that before a criminal trial can be legally commenced there must be an issue to try, and that a plea by or for the accused is essential to the formation of the issue. And the section above quoted requires the entry of the plea before the trial commences * *

"Neither sound reason nor public policy justifies any departure from settled principles applicable in criminal prosecutions for infamous crimes. Even if there were a wide divergence among the authorities upon this subject, safety lies in adhering to established modes of procedure devised for the security of life and liberty. Nor ought the courts in their abhorrence of crime, nor because of their anxiety to enforce the law against criminals, to countenance the careless manner in which the records of cases involving the life or liberty of an accused are often prepared. * *

"The present defendant may be guilty, and may deserve the full punishment imposed upon him by the sentence of a trial court. But it were better that he should escape altogether than that the Court should sustain a

judgment of conviction of an infamous crime where the record does not clearly show that there was a valid trial."

In *Shelp vs. United States*, 81 Fed. 700, arising in this circuit, the Court reversed a judgment of conviction for similar reasons. In its opinion, the Court said:

"It does not affirmatively show that Archie Shelp, the other defendant, was ever formally arraigned, or that any plea was ever entered by him to the indictment. The record is silent upon that question. No objection was ever made in the Court below, either during the trial, or upon the motion in arrest of judgment, or upon the motion for a new trial, or in the bill of exceptions, nor is it assigned as error upon the appeal to this Court that defendant, Shelp, was put upon his trial without any plea being entered to the indictment. It is therefore claimed by the United States that the question ought to be considered as having been waived by the defendant. It is, however, admitted that this Court can, in a proper case, 'notice a plain error not assigned'; that a writ of error addresses itself to the record; and that, if the record itself discloses the ground upon which a reversal is sought, there is no necessity for a bill of exceptions. If the failure to plead is a mere matter of form, and not of substance, the judgment should not be reversed. Rev. St. U. S., Section 1025. The authorities, however, are to the effect that, while the arraignment may be waived, the plea is absolutely essential. In capital or other infamous crimes, an arraignment and plea has always been regarded as a matter of substance and must be affirmatively shown by the record. Until the defendant has pleaded to the indictment, there is no issue to be submitted to the jury, and the omission to plead is fatal to the judgment, even after verdict. This rule applies as well to cases of misdemeanor as to cases of felony * * *

“If the defendant stands mute and refuses to plead, the Court is authorized to enter his plea of not guilty. Rev. St. U. S., Section 1032. But a trial without the entry of any plea by or on behalf of the defendant is invalid.”

Of like effect is the case of *Beck vs. United States*, 145 Fed. 625.

In *States vs. Walton*, 50 Oregon 142, judgment of conviction was reversed because the record failed to show that the defendant had pleaded to the indictment. In this case the defendant made no objection to the irregularity complained of until after the verdict, nor did it affirmatively appear that the entry of plea would have affected the result or that the defendant was in any manner prejudiced by the oversight. The Court, however, held:

“It is essential to a conviction for felony that such plea must be entered before proceeding to trial. The rule is settled in this state that this fact must affirmatively appear in the record of the trial.”

In answer to the contention that the defendant by going to trial waived this requirement, the Court said:

“The public has an interest in his life and liberty and neither can be lawfully taken except in the mode prescribed by law. That which the law makes essential in proceedings involving the determination of life or liberty cannot be dispensed with or affected by the consent of

the accused, much less the failure when on trial and in custody to object to unauthorized methods."

"The statute in this state by its terms has expressly declared the entry of a plea to be essential to its issue, and this language in this respect being clear and free from doubt, we must recognize its provisions so long as in force."

In Rose's U. S. Supreme Court Notes to the case of Crane vs. United States, *supra*, are to be found a number of subsequent decisions where the doctrine therein announced was followed and the following citations are submitted:

- 12 Ann. Cases 704.
- Ann Cases, 1915 C. 1070.
- 13 L. R. A., N. S. 811.
- 27 L. R. A., N. S. 1181.
- 21 L. R. A., N. S. 820.

It appears in Rose's Notes, and it is so specifically expressed, that the Crain case was distinguished in the case of Garland vs. Wash, 232 U. S. 645.

In Garland vs. Wash., *supra*, it was held that the accused need not be required to plead to a second and amended information. It will be noted in that case that the conviction was had for a violation of a statute of the State of Washington; that the issue had been joined on the first information, which resulted in conviction and the awarding of a new trial, but that a second information was thereafter filed to which no plea was made.

It thus appears that somewhere in the proceeding a plea had in fact been entered. In the case at bar there had been no plea at any time. Furthermore, in the Garland case, the Washington statute apparently provided that the defendant had the right to and could waive the formality of pleading. In the case at bar the laws of the United States, to-wit, Section 1032, R. S., which controlled the trial of this case, requires and insists upon the entry of a plea. Surely it will not be contended that the Garland case goes so far as to hold that the formality of a plea, either made by or on behalf of a defendant, can be dispensed with entirely.

While it may be true that the Garland case has in a measure modified the original decision in the Crain case, the Garland case, however, does not mean in any sense of the word that a plea is not necessary. There is no way to join an issue between the accused and the sovereignty save and except by the entry of a plea. If the defendant stands mute the Court shall enter a plea for him, and that plea shall be not guilty. (Atwell's Fed. Crim. Law, page 64.) Here the record affirmatively certifies that the defendant neither entered a plea, nor that the Court entered a plea for him. It must, therefore, follow that the verdict based upon such a record is invalid, and should have been set aside.

III

PREJUDICIAL REMARKS OF TRIAL
JUDGE.

Assignment of error No. 31 is predicated upon certain alleged prejudicial remarks of the Court made during the examination of William Glover, a most important witness for the defendant. Mr. Glover testified that he was the U. S. Secret Service agent in charge of the Portland office during the month of March, 1920; that during an investigation made by his assistant, Joseph Walters as to the dealings of a broker by the name of Randolph in War Savings Stamps, Walters had run across the defendant, Rossi, and in return for Rossi's information, his assistant, Walters, had promised him full immunity; that Rossi, desiring like assurance from Walters' superior, called upon Mr. Glover and thereupon Mr. Glover likewise gave the word of the Secret Service that the promise of immunity would be kept; that upon being informed by Mr. Veatch, the Assistant U. S. Attorney, that he was going to use Mr. Byron, Special Agent of the Department of Justice, to make further investigation in the matter, the witness washed his hands of the case. Subsequently and before this case came on for trial, he resigned from the service. He attended the trial under subpoena from the Government and naturally expected to be called as a Government witness.

Attention is here directed to the fact that the stand taken by Rossi, and which will more fully appear under a more appropriate heading, was that under the solemn promise of responsible heads of the Secret Service Bureau that he would be granted full immunity, he had divulged certain information and had made damaging confession and admissions against himself, which he would not have done without such promise of immunity. The Government saw fit to replace the man who had promised him immunity, and in presenting its case in chief was permitted to introduce Rossi's admissions and confessions made in pursuance to this promise of immunity, which were plainly of an involuntary character, and should not have been admitted. The Government failed to call Mr. Glover to the stand. It was, therefore, incumbent upon the defendant to wait until the Government's case was closed before he could be afforded an opportunity of calling Mr. Glover, and proving by him to the satisfaction of the Court that such promise of immunity had been made, and thereby effecting a removal from the consideration by the jury of the damaging admissions made by Rossi in pursuance to such promise. In the meantime, while the Government's case was progressing, the daily newspapers published sensational accounts of the trial, containing serious reflections upon the character and honesty of Mr. Glover, who had, prior to this case, been in the Secret Service for almost twenty years. Mr. Rossi's attorney had formerly been an As-

sistant U. S. Attorney for this district, and upon numerous occasions came in almost daily contact with Mr. Glover as a public official. Mr. Glover, who had been given no opportunity by the Government to explain his reasons for adopting and approving Mr. Walter's promise of immunity and who was naturally anxious to defend himself against the newspaper insinuations, sought Mr. Rossi's attorney for the privilege of taking the stand, which privilege was promptly given him, as his testimony was likewise desired by the defendant to establish the involuntary character of the admissions made by him. With this explanation there is submitted the following testimony given by him, under examination by defendant's counsel:

"Q. Did you come to me and ask me to put you on the stand?

A. I did, sir, night before last.

Q. Why did you ask that?

A. When I saw—the reason for asking you to put me on the stand—I saw that Mr. Veatch was not going to put me on the stand so I could explain away some of this newspaper notoriety that has been filtering here for the last six months; so I came to you and requested you to give me a chance to get the truth before this Court and my friends here.

Q. This was a personal request of me as a friend of yours?

A. Yes, absolutely."

Whereupon the Court interrupted as follows:

“COURT: Who is your friend?

A. Well, I have friends all over the coast, your Honor.

COURT: I thought you meant Rossi.”

(Trans., p. 138.)

These remarks of the Court, in the light of all the circumstances in the case, were unwarranted. That they had a prejudicial effect must be readily apparent from the following newspaper account of same appearing in the Telegram:

“William Glover, former Secret Service operative in charge of the Portland office, was not called as a witness by the Government because he had been ‘running around talking to attorneys for the defense,’ according to his testimony as brought out by John Veatch, prosecuting attorney, in cross-examination of the Government’s case against six Portland men charged with conspiracy in dealing in altered War Savings Stamps.

“Yesterday Glover testified he asked his friend, Barnett Goldstein, attorney for the defense, to put him on the stand in order that he might clear up recent newspaper notoriety before his friends.

“‘What friends do you refer to?’ asked Judge Wolverton.

“‘Your Honor, I have many friends up and down the coast,’ he replied.

“‘Oh, I thought you alluded to Rossi,’ said the Judge.”

(Trans., p. 62.)

The Court should not have made these remarks. Notwithstanding that the Court conceded that the defendant had established that such promise of immunity was in fact made; notwithstanding that the Court, after first permitting the introduction of the damaging admissions against Rossi to be placed in evidence, had subsequently withdrawn same from consideration by the jury, his remarks which were calculated to brand a witness as a friend and associate of an alleged criminal could not help but deprive the defendant of all the benefit he may have derived from Mr. Glover's testimony. It was clearly prejudicial.

At the outset, we admit that no exception was taken to the Court's remarks. As this Court can well understand, counsel is placed in a most embarrassing position when he deems a question improper, as he is loath to enter into discussion of its propriety with the Judge who has propounded it. Again, in view of the respect and deference entertained by the defendant's counsel for the trial Judge, counsel was extremely reluctant to give expression to any objection that might subject him to the charge of characterizing the Court as unfair. Counsel's failure to object, however, should not be permitted to work an injustice upon the accused.

While it may be true that as a general rule an Appellate Court will not consider an error not assigned, yet in doing justice, it is vested with discretion to con-

sider error in the trial of a criminal case, although the question was not properly raised at the trial by objection and exception. (Wiborg vs. U. S., 163 U. S. 32.)

In the case of *Eskay vs. U. S.*, 261 Fed. 320, the Court said:

"The contention that proper objections were not made, and proper exceptions were not taken, to permit the consideration in this Court of the issues which have been discussed, has not escaped attention, but it fails to convince. And even if it were tenable, this is a trial for an alleged crime, it involves the liberty of the citizen, and the fault in the trial is so radical that it may well be noticed and corrected by this Court without objection, exception, or assignment."

In the case of *McNutt vs. United States*, 267 Federal, 670, it was held as follows:

"In criminal cases, where the life or liberty of the citizen is at stake, the courts of the United States in the exercise of a sound discretion, may notice and relieve from radical errors in the trial which appear to have been seriously prejudicial to the rights of the defendant, although the questions they present were not properly raised or preserved by objection, exception, request or assignment of error."

Moreover, the late amendment to Section 269, Judicial Code (act of March 3, 1911), as amended by the act of February 26, 1919, fully authorizes and even commends this Court to look to the entire record and render judgment without regard to the technical error or the

want of exception to the remarks of the Court. The amendment reads as follows:

“On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the Court shall give judgment after an examination of the entire record before the Court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties.”

Trial courts have been repeatedly admonished to abstain from making prejudicial remarks during the course of a trial. The defendant is entitled to the presumption of innocence by both judge and jury until his guilt is established. If the jury is led to believe that the judge does not regard that presumption it is clearly evident that the jury will not, no matter how emphatic the Court might be in instructing the jury to entertain the same. While considerable latitude is allowed trial judges, yet they should not be permitted to assume the functions of prosecuting attorneys. So far as the Court's examination of witnesses is concerned, it will be conceded that the Court is vested with some discretion in so doing with a view to speeding the progress of the trial, but that there should be as little intrenchment as possible upon the province and field of the jury. The right to a trial by jury is priceless and in this age of enlightenment a jury is naturally capable of finding the light without the aid of judicial observation which might lead the jury to think the way the Court leads, rather than

to incur the displeased mind of the Court. It is not that the jury fears punishment at the hands of the Court, but the jury looks up to the Court, and becomes, as it were, a worshiper at the shrine of the correctness of the judge's opinion, and in their newness to court atmosphere they tremble lest their judgment as to the credibility of a witness may be at fault, especially since the Court has clearly indicated what he thinks about it, and so the opinion of one man is substituted for the opinion that should be the product of twelve minds at work with all the guides that experience has given them.

Furthermore, the examination of witnesses is more the appropriate function of counsel than of the judge of the court, and in a jury trial where the parties are represented by able counsel, it is scarcely possible to conceive circumstances under which the Court is free to enter upon a lengthy or antagonistic examination of a witness, particularly when such examination partakes of a reflection upon the reliability and credibility of the witness, so as to prejudice the jury against its weight and value. It is altogether a task of great delicacy and much difficulty for the presiding judge to so conduct the examination of a witness as to prevent the jury from learning the trend of his mind, and therefore should only be undertaken when absolutely necessary. No such necessity existed here.

In the case of *Adler vs. U. S.*, 182 Fed. 464, the Court said:

“The Circuit Court of Appeals is reluctant to interfere with the discretion of a trial judge in participating in the examination of a witness, but will do so when the judge’s examination has been conducted in a manner so hostile to the defendant and his witnesses as to produce in the mind of the jury the impression that the judge has a fixed opinion that the defendant is guilty and should be convicted.”

In the case of *Sandals vs. U. S.*, 213 Fed. 576, the Court said:

“Positive and emphatic statements of a judge cannot be removed from the influence it has upon a jury by an instruction disclaiming any purpose to control the jury by the remarks complained of. The jury is naturally sensitive to the Court’s expression of opinions concerning the issue of facts in the case.”

In the case of *Foster vs. U. S.*, 188 Fed. 385, the Court said:

“The judge should be very careful not to say anything calculated to exert a controlling influence upon the minds of the jury in ultimately determining the facts which are alone to be passed upon by them.”

In *Allan vs. U. S.*, 115 Fed. 3 (Ninth Circuit), the Court held that certain remarks of the District Attorney and the Court, reflecting as they did upon both the defendant and his attorney, were calculated to unduly

prejudice the jurors against the defendant and to prevent him from having a fair and impartial trial. The trial of every man should be free from undue prejudice or odium, especially upon the part of all officers clothed with the power and charged with the duty of administering the law, in such a manner as to reach the ends of justice and of right.

In the case of *Hawkins vs. U. S.*, 116 Fed. 572, (Ninth Circuit), while questioning the jurors, the defendant's counsel asked one of the jurors as to whether he had any opinion as to the guilt or innocence of a joint defendant who had been tried and convicted for the same offense. The Court injected the remark: "That is one of the things that is an established fact in this community." The Circuit Court held that this was error, in that it had the effect of prejudicing this defendant's case in the minds of the jurors, a prejudice which was not removed or modified by any instruction subsequently given.

In the case of *State vs. Donovan*, 16 N. W. 206, the Court remarked in the presence of the jury, referring to the fact of defendant's drunken condition:

"If you offer it as a defense, I think it is immaterial because I shall instruct the jury that drunkenness is more of an aggravation than an excuse."

This was held to be error and not cured by subsequent instruction.

In the case of *McNutt vs. U. S.*, 267 Fed. 670, the Court held:

"The action of a Court in reminding a witness for the prosecution, who made a statement favorable to defendant and not in agreement with a previous affidavit he had signed, of the penalty for perjury, on which the witness changed his testimony, in the presence of other witnesses and the jury, held so calculated to intimidate other witnesses and to prejudice the jury as to deprive defendant of the fair and impartial trial to which he was entitled."

In *Kirk vs. Territory*, 60 Pacific 797, the Court stated that it was error for the trial judge, during the trial of one accused of murder, to express in the presence of the jury an opinion as to the character or credit of the witnesses. This case quotes with approval the case of *State vs. Clements*, 15 Oregon 237, which held to like effect.

In the case of *Rutherford vs. U. S.*, 258 Fed. 863, the Court held:

"We think that the attitude of the Court in regard to the testimony of these three witnesses and the action it took in the presence of the jury in the case of the witness, William F. Hudgings, was most prejudicial to the defendants. It was very likely to intimidate witnesses subsequently called, to prejudice the jurors against the defendants, and to make them think that the Court was satisfied of the defendants' guilt. What a judge may say to the contrary on such an occasion will not necessarily prevent such consequences. It is not enough to justify a conviction that the defendant be guilty. He

has a right to be tried in accordance with the rules of law. The defendants in this case did not have the temperate and impartial trial to which they were entitled, and for that reason the judgment is reversed."

As stated in the case of *Briggs vs. People*, 76 N. E. 502:

"Every lawyer appreciates the fact that any intimation, however slight or unconsciously made by the Court in the presence of a jury as to the force and effect of evidence, is most damaging to the party against whom it is made, and in a case of such grave importance to the defendant as this must be held reversible error. It is not the province of the Court, in a criminal case, to express any opinion upon the facts, either orally during the trial or in the form of instructions."

As stated in the case of *O'Shea vs. People*, 75 N. E. 984:

"Under unusual circumstances it may become his duty to call and examine witnesses himself, but where he does this he must not forget the function of the judge and assume that of the advocate. Necessarily, the extent to which the trial judge will participate in the examination of a witness is largely a matter of discretion with him, to be determined from the circumstances of the particular case as they arise; but in a jury trial, where the parties, as here, are represented by able, conscientious, and experienced attorneys, it is scarcely possible to conceive circumstances under which the Court is, in the performance of his duty, free to enter upon a lengthy cross-examination of witnesses. A suggestion to one or the other of the attorneys of the matter or line of inquiry which the judge desires developed is ordinarily all that is necessary."

As stated in the case of *Andrea vs. Ketcham*, 77 Ill. 379, and cited with approval in the case of *Marzen vs. People*, 50 N. E. 254:

“We are aware of no rule of law or practice that would allow the presiding judge to give to the jury his opinion on a controverted question of fact. The knowledge of the judge on the question at issue may have been superior to that of any witness sworn, yet the law would not permit him to bias the jury by his own opinion as to any fact in the controversy, which had to be established by evidence. * * * The opinion of the judge, given as it was before the jury upon a question of fact which was controverted, could not do otherwise than prejudice the jury against appellants.”

As stated in the case of *Kennedy vs. People*, 44 Ill. 283, and cited with approval in the case of *Marzen vs. People*, 50 N. E. 254:

“The trial court excluded certain evidence, and, after reciting it, remarked, in the presence of the jury, ‘that it amounted to nothing.’ The Court in this assumed the province of the jury in determining the weight of the evidence. It was for the jury, and not for the Court, to say whether these statements, if made, amounted to anything, and such remarks made by the Court in the hearing of the jury are well calculated to exclude from their consideration such evidence.”

It is needless to submit further citations, that under our system of jury trials, the influence of a trial judge with a jury is necessarily and properly of great weight, and his lightest word or intimation is received with deference and may prove controlling, particularly when it

effects the credibility and weight of a most important witness for the defendant. This was a matter solely within the province of a jury and should not have been invaded by the Court.

The remarks of the Court that the Secret Service man, Glover, was Rossi's friend gave the impression that they were both in collusion and naturally had a tendency to discredit Glover's testimony upon the important question as to the voluntary character of Rossi's admission. The weight and credibility of Glover's testimony was a question of fact to be determined by the jury from all the circumstances in the case. Whatever belief was to be entertained upon this subject was a belief to be entertained by the jury. When the Court made the statement attributed to him, having the tendency that it did to discredit Glover's testimony, he thereby unduly influenced the jury in the matter of determining an important question of fact, which was within the exclusive jurisdiction of the jury alone.

IV

PREJUDICIAL NEWSPAPER ACCOUNTS RENDERING FAIR TRIAL IMPOSSIBLE.

Assignment 30 is predicated upon the prejudice aroused against this defendant by articles appearing in the newspapers during the course of the trial.

While it is true that as a general rule this error will

not be considered where there is no proof that the jury was in fact actually unduly influenced by the newspaper articles, yet they are of such a nature as to make it apparent that no other result could have been possible. The defendant was entitled to a fair and impartial trial. We submit the following newspaper extracts to show that he could not have possibly had such a trial:

(a)

“Implication of the United States Secret Service in the illegal sale of War Savings Stamps obtained by the robbery of a number of country banks is expected when the trial of six men charged with altering and disposing of the stamps begins in Federal Court Wednesday.

“The stamps, together with some Liberty Bonds, were stolen from banks in Oregon and Washington last winter. The total value of the loot was in the neighborhood of \$35,000.” (Trans., p. 57.)

NOTE: The only charge in the indictment of any theft of stamps is that in one of the overt acts it is claimed that one of the defendants, Peterson, stole a quantity of War Savings Stamps from the Scio bank. No other defendant is implicated in the theft and no other bank is alleged in the indictment to have been robbed. Furthermore, at the very outset of the trial insinuations are directed against Mr. Glover, U. S. Secret Service agent, a witness for the defendant, which tended to prejudice the jury against his credibility.

(b)

"The six defendants are Bob La Salle, ex-detective on the city police force; Fred Peterson, *alleged robber*, who *has served three terms* in penitentiaries; Dave Stein, local pawnbroker; William Brenner, owner of a clothing store; Angelo H. Rossi, pawnbroker and alleged to be a fence for thieves, and W. E. Smith, a watchmaker, who once worked for Rossi." (Trans., p. 59.)

NOTE: Before there was the slightest proof submitted to the jury that any of the defendants had previously been convicted of a crime, the jury was told through the medium of the press that the defendant, Peterson, had served three term in penitentiaries. Reprehensible as this statement was, appearing when it did, attention is called to the fact that the only proof offered at the trial of any previous record on the part of the defendant, Peterson, was the fact that he was then serving a term upon his plea of guilty to the possession of the same altered stamps which was made the basis of this conspiracy indictment.

(c)

"During the progress of the trial Thursday, William Glover, former head of the U. S. Secret Service here, held frequent whispered conferences with Barnett Goldstein, one of the six attorneys for the defendants.

"It was charged by Assistant U. S. Attorney Veatch that Goldstein is secretly representing Glover in this trial, it being intimated by Veatch that Glover himself

may be on trial at some time in the future." (Trans, p. 61.)

NOTE: The insinuation that Mr. Glover might be put on trial for some alleged offense (an offense conjured up to prejudice the defense) could not help but prejudice the jury against him, thus depriving the defendant of the full value of his testimony.

(d)

"New developments growing out of the War Savings Stamp scandal in the Federal Court trial now in progress today here were:

"That \$5000 worth of stamps disappeared after they had passed through the hands of three detectives who made an arrest of a petty criminal in whose possession was found stamps to the value of something like \$20,000, part of the loot from the Bank of Asotin, Wash., robbed by yeggs.

"That an attempt was made to bribe City Detective Tom Coleman.

"That the total amount involved in the robbery of six or seven small country banks in the Northwest within a space of a few months was close to \$200,000.

"That the recent robbery of the Scottsburg post-office and general store was the work of a yegg gang, headed by Frank Wagner, notorious safe cracker, is the opinion of Pinkerton operatives who have been working on the case.

"Wagner, who was serving a forty-year sentence at Salem for the blowing of a safe at Astoria, made his escape a few weeks ago.

FENCES WERE TO SELL PLUNDER.

"The theory that Wagner planned and carried through the coup of Scottsburg, where \$20,000 in cash was the principal loot, was formulated when the Pinkerton man learned that Ann Bryant, 'affinity' of Wagner, has been making her home within six miles of Scottsburg during the past few months.

"All of this plunder is supposed to have been brought by the bank robber gang to Portland to be disposed of through a Portland 'fence.'

"Angelo Rossi, one of the six defendants in the War Savings Stamps controversy case now being prosecuted in the Federal Court, is suspected of having been the principal distributing agent, and W. E. Smith, William Brenner, David Stein and Detective Bob La Salle, co-defendants with Rossi, are presumed to have been sub-agents. Besides these, the United States Department of Justice believes that many other Portland men are involved.

" 'The worst gang of yeggs that has ever operated on the Pacific coast,' said Special Agent William Byron, of the U. S. Department of Justice, 'are mixed up in this conspiracy.'

FIND BRIBE ON HIS FRONT PORCH.

"That it would have been impossible for bank robbers to put \$20,000 worth of Government securities on the market without the co-operation of Government sleuths and of some local law enforcement agencies is the opinion of Bryon." (Trans., p. 63.)

NOTE: This account of other alleged robberies of stamps, having no connection with the stamps covered

by this indictment, was palpably prejudicial to the defendants, particularly in view of the fact that no such proof as indicated in this newspaper account was even attempted to be submitted at this trial. We also call attention to the alleged remarks of Mr. Bryon, a Government witness. It would seem that the Government was trying to win its case with the aid of newspapers rather than by the orderly submission of proof in a court room.

A somewhat similar situation arose in the case of *Harrison vs. U. S.*, 200 Fed. 669, wherein the Court, holding that the defendant did not have a fair trial and was, therefore, entitled to a new trial, said:

“We should not omit to mention one occurrence upon the trial. At the time of, and shortly preceding, the arrest, the postoffice inspectors learned that the refunds were not being promptly made as hereafter stated. In February, 1911, while the trial below was in progress, the Postoffice Department promulgated a ‘fraud order’ against Harrison in connection with the vacuum cleaners, and this fact was prominently published in the Cincinnati newspapers, and so presumably came to the jury’s attention. The record indicates no reason to presume that the withholding of this order until after the jury was selected and the trial in progress, and its promulgation and publication in such a way as to have the most prejudicial effect upon the respondent before the jury, amounted to anything more than an unfortunate coincidence, and the occurrence was beyond the control of the trial judge; but it was of itself sufficient to make impossible that fair trial to which every respondent is entitled.”

In *Cooper vs. People*, 22 Pacific 799 (6 L. R. A., 429), the Court said:

“The parties have a constitutional right to have their cases tried fairly in court by an impartial tribunal, uninfluenced by newspaper dictations or public clamor.”

It follows, therefore, that any newspaper comment which tends to make the position of the litigant difficult before a court or jury, hampers the efforts of such court or jury to adjudicate the issue fairly and dispassionately.

In *United States vs. Toledo Newspaper Company*, 220 Fed. 501, the Court said:

“Newspaper criticism of a party to a pending cause respecting the same has always been considered as misbehavior tending to obstruct the administration of justice. This upon the principle that the Court has a paramount duty to protect suitors from anything which will interfere with a fair consideration of their trial. It was this, doubtless, which prompted Chancellor Kent to say, ‘It is unreasonable to leave a suitor unprotected in the moment when he stands most in need.’”

Answering the contention that it was not proven that articles had been read by the jurors or that they had been in fact influenced thereby, the case of *State vs. Howell*, reported in 13 Annotated Cases, 503, is decisive of the question. In this opinion the Court said:

“But articles circulated through the neighborhood when a trial is in progress may influence the trial with-

out being read by the Court or jurors. Witnesses may be intimidated or otherwise influenced by them. A sentiment favorable or unfavorable to one of the parties to the case may be made to so pervade the community as to reach the court room and the triers and interfere with the fair and impartial performance by the latter of their duties."

The mere reading of the newspaper articles above quoted should be sufficient to impress this Court that the sentiment aroused by the press through the publication of matter not established at the trial nor even connected with the charge in the indictment, was most unfavorable and prejudicial to the defendants and could not but help prevent them from having that fair and impartial trial which the constitution guarantees to every person.

V

IMPROPER EVIDENCE AS TO REGISTRATION OF STAMPS.

Assignment 20 is predicated upon the allowance by the Court in evidence of the testimony of Miss Daisy Buckner relating to the registration of War Savings Stamps. Miss Buckner, postmistress of the Scio post-office, was permitted by the Court, over the objection of counsel, to testify that the War Savings Stamps in question were registered and was then permitted to relate the method followed by the department in registering the stamps. (Trans., p. 71.)

Later, during the course of her examination, the Government was permitted, over the objection of counsel, to introduce in evidence a list of claims filed with the department by a large number of the Scio postoffice patrons for the redemption of the stamps so registered, and which had been stolen from the Scio State Bank, where said patrons had placed them. (Trans., p. 77.)

This evidence was immaterial on the ground that nowhere in the indictment was it alleged that the conspiracy contemplated the alteration of registered stamps, and the admission of this testimony was, therefore, a fatal variance between the charge made and the proof submitted, and for the further reason that this testimony was prejudicial to the defendant because of the fact that non-registered stamps are not entitled to replacement and redemption by the Government, whereas registered stamps are. The Court can readily see the importance of this line of testimony. In the indictment the Government merely claimed that the defendants violated the counterfeiting statutes by altering certain obligations of the United States, which in this instance were War Savings Stamps. No charge is made that the stamps were registered or that the conspiracy ever contemplated the alteration of registered stamps. The testimony should, therefore, have been restricted to the matter of the alteration of non-registered stamps and none other. It may be true that the alteration of registered stamps would

involve a fraud upon the Government, and in fact such would be the logical and reasonable consequence, but this is not within the scope of the indictment. By the allowance of this testimony, to which objection was taken, the jury was permitted to go outside the limits of the indictment and pass upon the question of the alteration of registered stamps, when no such issue was made by the pleading. We, therefore, contend that this was a fatal variance. The defendant came prepared to defend himself against the charge of conspiring to alter non-registered stamps. He had a right to believe that no other charge of conspiracy would be brought against him. In that he was misled to his prejudice, for the proof offered by the Government that the stamps were registered in no wise corresponded with any allegation in the indictment. We contend that the crime must be proved as laid in the indictment. The Government, had it intended to prove that the stamps were registered, could have easily charged a conspiracy to alter registered stamps, but it did not do so, and it should not, therefore, have introduced any proof appertaining to the registration of stamps, as that was not within the scope of the indictment. As stated in 12 C. J. 636:

“As in other criminal prosecutions, on trial of an indictment for conspiracy the proof must correspond with and support such material averments, and if the offense intended is stated with unnecessary particularity, it should be proved as laid. The purpose and object of the

conspiracy must be proved as laid in the indictment. Likewise the means to be employed in effecting the object of the conspiracy must be proved as charged."

In the case of *Rabens vs. U. S.*, 146 Fed. 879, the accused was indicted for conspiracy to rob the postoffice at Latta, S. C. Evidence was introduced tending to show a general conspiracy to rob. The Court, in reversing the judgment of conviction, held that this was a fatal variance. In its opinion the Court said:

"The count upon which the plaintiff in error was indicted is clear and specific, and leaves no doubt as to the offense charged, to-wit, a conspiracy to rob the postoffice at Latta. There is no allegation in the count which can in any way be construed to mean a general conspiracy to rob. The District Attorney could undoubtedly have charged a general conspiracy to rob. However, he did not see fit to do so, but elected to rely upon the specific charge of a conspiracy to rob the postoffice at Latta. Therefore evidence tending to show a general conspiracy was incompetent and should have been rejected by the Court. The Government having relied upon a count charging a conspiracy which is restricted to one transaction, it was incumbent that it should satisfy the jury beyond a reasonable doubt that the plaintiff in error entered into a conspiracy with intent to rob the postoffice at Latta, as alleged."

As stated in Wharton's *Criminal Evidence*, Vol. 1, page 277:

"As a general rule the means, or the manner of accomplishing the criminal intent and purpose, are matters of evidence for the jury, and not necessary to be set forth

in the indictment. Where, however, it is necessary, or where the pleader elects to set forth by averments, in the indictment or information, a description of the instrument or the means by which the offense was consummated, then the evidence must correspond with the averments in general character and operation."

In the case of *Ward vs. State*, 21 S. W. 250, the Court held:

"On the trial for conspiracy to commit robbery if the indictment alleges the possession of the property intended to have been stolen in one person, and the title in another the state must prove both allegations.

"If Lyon had possession and exclusive control of the property of the Pacific Express Company, it was not necessary to allege that the property belonged to the company. It would have been sufficient to have alleged the property in Lyon. But as the indictment gave a particular description of the crime, though unnecessary, the state must be confined to the allegations and prove the offense as described."

As stated in the case of *Commonwealth vs. Ellis*, 118 S. W. 976:

"The evidence must be limited to establishing the charge made in the indictment. It can take no wider range than the indictment warrants. If the commonwealth chose to limit the range of the charge against the defendant to the conspiracy to intimidate Mose Thornton, the defendant had a right to believe, and to rely upon that belief, that he would be required to meet only this charge, and to rebut evidence of the commonwealth against him tending to establish this charge."

Furthermore, the introduction of this testimony could not help but befog the simple issue as made out by the indictment, for the evidence tended to raise an additional issue upon an offense not included in the indictment. As stated in the case of *Ford vs. U. S.*, 259 Fed. 552:

"In the prosecution for an unlawful introduction of liquor into a state, evidence tending to show that the defendant was also concerned in another attempted introduction of liquor on the same night is inadmissible. The danger of this kind of evidence is that it is likely to lead the jury aside from the case on trial, confuse the issues and result in a conviction for acts not included in the indictment."

VI

IMPROPER EVIDENCE AS TO DEFENDANT'S ADMISSIONS BEFORE GRAND JURY.

Assignment 6 is predicated upon the allowance by the Court in evidence of the testimony given by Mr. P. A. Young, the foreman of the grand jury that returned this indictment, of statements made to it by the defendant. It is the contention of the defendant that these statements were induced by a promise of immunity heretofore extended to him, and upon which promise he relied.

According to the bill of exceptions it appears that Joseph Walters, a Secret Service agent, acting under instructions from his superior officer, Mr. Glover, made an investigation in the month of March, 1920, relative

to certain War Savings Stamps that had been reported to him as being circulated about the city. (Trans., p. 127.) On March 17, 1920, he promised immunity to the defendant in return for certain aid and information to be furnished by the defendant; that he received such information and that he was enabled by reason thereof to locate the man that robbed the Scio bank and who handled the stamps; that he thereupon informed Mr. Glover of such promise, who in turn was called as a witness and who corroborated Mr. Walters' testimony as well as testifying that he personally confirmed and ratified the promise of immunity; that at the commissioner's hearing of Peterson, the man alleged to have robbed the Scio bank, he shielded his informant, Rossi, by not divulging the source of his information. This was done with the sanction and consent of the Assistant U. S. District Attorney, Mr. Veatch, who conducted the case before the commissioner; that after he had received valuable information from Rossi concerning the disposition of these stamps, Mr. Veatch took the case out of his hands and further investigation in the matter was conducted by Mr. Bryon, special agent of the Department of Justice; that then Mr. Glover withdrew from the case entirely; that until that time, to-wit, between March 17, 1920, when the promise of immunity was made to Rossi, up until May 13, 1920, when he was replaced by Mr. Bryon, Mr. Glover was receiving information from the defendant.

Mr. Veatch, the Assistant U. S. Attorney, admitted that this case was brought into his office by Mr. Walters, and that in May, 1920, when Mr. Rossi was taken to Bryon's office, he knew that in March, 1920, Rossi had given certain information to Walters in return for which Walters had promised him immunity. (Trans., p. 126.)

Mr. Bryon testified that about May 13, 1920, he had an interview with the defendant, Rossi, in his office at which interview Mr. Veatch was present. That at that time Mr. Rossi informed him that he had been promised immunity by Mr. Glover (trans., pp. 93-95); that thereupon Mr. Rossi gave him a detailed statement of the transactions in which he was involved, which statements were thereafter transcribed and testified to by Miss Doeltz. (Trans., p. 95.)

At this point attention is called to the fact that strenuous objection was made to the introduction in evidence of the testimony given by Mr. Bryon, and to that of the transcript read by Miss Doeltz of Mr. Rossi's statement to Mr. Bryon on May 13, 1920, upon the ground that such admissions were made and induced by the promise of immunity. At that time the Court overruled the objection and allowed the testimony to go in.

After the Court had thus ruled, the Government called Mr. Young, the foreman of the grand jury. He testified, over the objection of the defendant, that while

the grand jury was investigating the case in the month of May, 1920, Mr. Rossi appeared before that body and gave testimony concerning his connection with the stamps which was the subject matter of their inquiry; that at the time he gave this testimony, the grand jurors were told that partial information had been given by Mr. Rossi in return for which he had been promised immunity from prosecution. (Trans., p. 117.)

At the close of the Government's case the defendant called Messrs. Walters, Glover and Veatch, who positively testified that such promise of immunity had been extended to Mr. Rossi, whereupon the defendant renewed his objection to the testimony of Mr. Bryon as well as that of Mr. Young, and moved that they be stricken out. The following excerpts from the bill of exceptions will indicate the nature of the objection and the Court's ruling at that time:

"MR. GOLDSTEIN: At this time, if the Court please, in view of the testimony of Mr. Walters and of Mr. Glover, who, the testimony indicates, were then agents in charge of the Secret Service branch of the Government, and who were then and there acting and qualified to act as such, that they had secured certain information from Mr. Rossi upon certain inducements held out to him of hope of being shielded and protected from prosecution concerning his connection with the stamps, I move that any statements or admissions introduced in evidence, subsequent to that promise and subsequent to securing information through him, based upon that hope, be stricken out, on the ground that it is involuntary, and

on the ground it was induced by hope on the part of Mr. Rossi, and not a voluntary statement made by him without the holding out of such hope.

“**COURT:** This is an indictment upon a charge of conspiracy, and even if Rossi had given this information under inducement, yet the information would be pertinent for determining whether or not he and the other parties—alleged parties to this conspiracy, were really and actually engaged in the conspiracy. So that, take it any way you like, the testimony of the admissions of Rossi would be pertinent in this case. As to how it would affect Rossi himself, the Court will instruct the jury about that. I will overrule the motion.

“Exception allowed.” (Trans., p. 139.)

At the close of all the evidence in the case the defendant again renewed his objection to this testimony, at which time the Court changed his mind and decided that the testimony of Messrs. Bryon and Young should be stricken out upon the ground that a promise of immunity had been made to Rossi, and that he had a right to rely upon such promise. His opinion thereon is here submitted:

“**COURT:** I have an idea he had a right to rely upon that promise, and very likely did rely upon that promise for immunity when he was called before Mr. Bryon and there caused to make a statement. The warning extended to him, of course, was proper and right, but I doubt whether that warning will deprive him of his right to depend upon the immunity that was offered him by a detective officer. There was some testimony, there was some information given by this defendant, Rossi, which led to the arrest of Peterson; and

so far as he is concerned, according to the understanding as testified to by Mr. Glover and by Walters, Rossi did give some information which led to the detection and the arrest of Peterson with these stamps on his person or in his room; so that Rossi, having carried out what Glover said was his part of the agreement, and having rendered that service which led to the arrest of the defendant Peterson, he has performed his part of the agreement, and Walters having extended him immunity, I think he is entitled to be relieved from the effect as against him of that testimony.

“MR. VEATCH: That is only as to his admissions before Mr. Bryon.

“COURT: Yes.

“MR. VEATCH: How about the admissions before the grand jury?

“COURT: I think that must go the same road.”
(Trans. p. 142.)

Later, the Court again changed his mind and permitted the testimony of Mr. Young concerning the admissions made by Rossi before the grand jury to stand. (Trans. p. 146.) In that, we contend the court erred. It is difficult to conceive how the court can exclude Bryon's testimony without likewise excluding Young's testimony. They were both based upon admissions made by Rossi about the same time, to-wit, May 13, 1920, and subsequent to the promise of immunity that had been extended Rossi upon which he relied, and had a right to rely. Nothing transpired between those dates

to warrant a belief on the part of Rossi that such promise had been revoked. Why then could he not rely upon that same promise when he made his statement to the grand jury? The court apparently was under the impression that he was justified in such reliance when repeating his admissions to Bryon. It would seem that the defendant would be considerably more justified in repeating his admissions to the grand jury based upon such reliance, particularly when upon such testimony the grand jury was enabled to return an indictment against those he had given the information desired by the Government, and for which information he had in the first place been promised immunity.

In the case of *Bran vs. U. S.*, 168 U. S. 532, the Supreme Court said:

“Where there is any doubt as to whether the confession was voluntary or not must be determined in favor of the accused. Where the language of the officer is such as to hold out an inducement, no confession or statement made in consequence thereof can be admitted. Any inducement offered by one in authority calculated to operate upon the mind of the prisoner, would render a confession as a consequence thereof inadmissible. The character of the alleged confession depends upon the question whether the making of same was voluntary and without inducement or compulsion, and not whether the particular communications contained in it were voluntary or not.”

That there was some doubt as to the voluntary character of the admissions made by defendant before the

grand jury is apparent by the frequent changes of mind manifested by the court, but in our opinion there should have been no doubt, for the simple reason that there was nothing in Mr. Young's testimony from which the court could even infer that Mr. Rossi had been explicitly warned, as he should have been, if he was not to rely and could not rely upon the promise of immunity previously extended to him so far as his admissions to the grand jury were concerned.

In 16 C. J. 722 it is stated:

“Where a confession has been obtained under circumstances rendering it involuntary and inadmissible, a presumption exists that any subsequent confession arose from a continuance of the prior influence, and this presumption must be overcome before the subsequent confession can be received in evidence. The controlling influence which produced the prior confession is presumed to continue until its cessation is affirmatively shown, and evidence to overcome or to rebut this presumption must be very clear, strong, and satisfactory; if there is any doubt on this point, the confession must be excluded.”

As stated in *State vs. Wintzingerode*, 9 Ore. 153:

“The circuit court had the undoubted right to try the question whether the original influence had ceased when the subsequent confessions were made, and if the record before us disclosed any fact or circumstance to justify the belief that they had in fact ceased, when such subsequent confessions were made, we should not disturb its determination. But no such facts or circumstances appearing by the bill of exceptions, which

purports to give all the testimony in substance, the subsequent confession of Cameron being on the same or at farthest the day succeeding the original confession to Officer Mead; the prisoner being still in custody on the same charge; the inducement to make the original confession being still in full force and not withdrawn, and no warning having been given, we cannot escape the clear and firm conviction that the same influences which induced the original confession to Officer Mead, and which the circuit court, with better facilities for arriving at a correct conclusion than this court possesses, held inadmissible, because it was so induced, were in full operation upon the appellant's mind when subsequent confessions were made, and that therefore these confessions should have been excluded on the trial, and not allowed to be given in evidence against him."

In the case of *U. S. vs. Charles*, Fed. case 14786, the defendant was indicted for arson. He made an involuntary confession before the committing magistrate. Thereupon the prosecutor called one of the grand jurors to testify as to what the defendant had subsequently stated before the grand jury. The Appellate Court granted a new trial upon the ground that:

"The first confession of the prisoner was made under the impression of fear and hope excited by the observations of the magistrate, therefore no subsequent confession of the same facts ought to be given against him."

While it is true the influence of an improper inducement may be removed by a subsequent confession if the accused is properly cautioned, the warning given should be explicit and it ought to be full enough to apprise the accused that anything he may say after such warning

may be used against him and that a previous confession made under improper inducement cannot be used against him, for it has been well said:

“For want of this information, the accused might think that he could not make his case worse than he had already made it and under this impression might have signed the confession.”

Wharton on Criminal Evidence, p. 1393.

In the case of *United States vs. Cooper*, Federal Case 14864, the Court said:

“A person having been once induced by improper influence to make a confession, any other confessions of a like character although made at a subsequent time and to different persons are inadmissible even when voluntarily made unless it be shown that the prior improper influence has been removed either by an explicit and distinct warning or some other equally cogent means.”

As to the inadmissibility of confessions induced by hope, attention is called to the exhaustive opinions in the cases of

Bram vs. U. S., 168 U. S. 532.

Sorenson vs. U. S., 143 Fed. 820.

It is stated in *Zoline's Federal Criminal Law and Procedure*, Section 326:

“It is well settled that confessions not voluntarily made are inadmissible against an accused, and the courts are astute, and properly so, in protecting the rights of accused persons against confessions obtained by duress

or through hope or fear. To entitle the Government to introduce in evidence the statement or confession of the accused, whether oral or written, it must appear that it was made voluntarily and without compulsion or inducement of any sort. Confessions of a defendant are inadmissible if made under any threat, promise or encouragement of any hope or favor. The burden of proof that no improper inducements or threats were made when the confession was made is with the prosecution."

In *Grynor vs. State*, 49 S. E. 700, the Court said:

"If a confession is induced by another through hope of benefit, it is involuntary although such inducement be held out by one person and the confession be subsequently made to another who has no knowledge of such inducement and who offers none himself."

In the case of *U. S. vs. Chapman*, Federal Case 14783, it was held that a confession made by a prisoner on the hearing before a committing magistrate, although previously cautioned by the magistrate not to incriminate himself, was inadmissible because it appeared that 42 hours previous he had made a confession before one of the magistrate's officers under the influence of false promises.

In this case it was contended by defendant's counsel:

"If inducements have been held out, and confessions obtained within a reasonable time before the official examination, the attention of the prisoner must be called to his prior confession and then explicit warning must be given not to rely on any expected favor. The loose and general caution 'not to incriminate himself' is far

from sufficient. Inducements being once held out and confessions procured, the burden of proof is on the prosecution to show that they have been entirely removed, and that perfect freedom prevails in the mind. The presumption of law is that the influence still remains until by clear and satisfactory proof it is shown that every vestige is removed and the mind again set free. The proof, whether positive or circumstantial, must be ample and satisfactory."

In its opinion, the Court said:

"Had the mayor been apprised of the previous confession, it would have been his duty to have told the prisoner, previous to his examination, in addition to the usual caution, that the promises made by the constable were delusive and unauthorized, and to make him clearly understand that anything he was about to confess, must not be with the hope or expectation of having the slightest favor shown to him in case of conviction. Without such information to the prisoner, may it not be a rational conclusion, that the confession which followed was made under the influence of the promises which had preceded and induced the previous confession? It is immaterial what length of time may have elapsed between the two confessions, if there had been no change in the circumstances or situation of the prisoner."

In *Conley vs. State*, 7 S. W. 255, the Court said:

"If the confession is clearly traceable to the prohibited influence, the trial judge should exclude it and his failure to do so is error." In its opinion the Court said:

"The court refused to permit anything which transpired in the grand jury room to go to the jury, but admitted the statement made to the three witnesses named. The confession made to those witnesses is, we

think, fairly traceable to the hope inspired by the assurances made by the grand jurors and prosecuting attorney. These officers, in their commendable zeal to ferret out the perpetrators of the crime, evidently led the prisoner to expect favor from his confession. It was the natural consequence of the course pursued that such an impression should rest upon his mind. It is true one of the witnesses testified that he was satisfied the prisoner understood all the while that he was to be indicted, but none of them testifies that a hope of leniency in the prosecution was not fairly deducible from what transpired in the jury room alone; and the foreman felt sure that no other conclusion could have been reached by the prisoner. If a doubt remained in the prisoner's mind after the first day's experience, it must have been dispelled by the assurance he then received from the state's attorney. What could he have inferred from that except that a further and fuller statement would be followed by leniency or an exemption from prosecution? The assurance that he would be dealt with fairly at the hands of the state cannot be interpreted as merely a guaranty that he should not thereafter be cheated of his legal rights. The integrity of the state's official, and the protection which the most wretched feels the courts will afford him, was sufficient guaranty of that favor. The prisoner must have taken this last assurance as a sanction of the hope he understood the grand jurors were holding out to him. By all the opinions, arousing an expectation of clemency by a prosecuting officer will exclude the confession. It is not material whether the prosecuting officer knew the grand jury had inspired a hope which his language would inflame, or that the grand jury were informed the officer would talk, or had done so, with the prisoner. The test is: Was there a casual connection between the hope aroused and the confession? The fact that the confession is not made to the officer or officers who generated the hope is immaterial.

When the improper influence has been exerted, it must be shown by the state that it has been removed before a subsequent confession is admissible."

The conduct of the prosecution in using the confession of Rossi under the circumstances here mentioned for the purpose of bringing about his conviction was unjustified and unwarranted. Here is the case of a man who placed implicit faith and confidence in the promise of a Government officer. That Government officer was a man in full authority of the investigation then being conducted. He promised immunity to Rossi in return for which he wanted certain information that Rossi had. Rossi had the right to rely upon such promise, and he did so, by reason of which he gave damaging evidence against himself and furnished information to the officers that helped them to discover the whereabouts of a considerable number of War Savings Stamps. His information directly led to the arrest of the defendant Peterson, at whose preliminary hearing the promise of immunity was kept so much so that protection from public exposure was accorded him with the knowledge and consent of Mr. Veatch, the prosecuting officer. That promise of immunity was made on March 17. The promise was continued to be respected and kept by the Government officials until May 13th, 1920, during all of which time Mr. Rossi continued to aid them in their investigations. Nothing had transpired during that time to lead Rossi to believe that the promise of im-

munity would be disregarded or revoked. Then on May 13th it develops there was some friction between two Government officers, Mr. Glover of the secret service and Mr. Bryon of the Department of Justice, with the result that Mr. Glover was removed from the investigation and Mr. Bryon substituted in his stead. Mr. Bryon calls Mr. Rossi to his office in the old Post Office building where the grand jurors were even then conducting their secret inquiry. Mr. Rossi responded. After assuring himself of Mr. Bryon's knowledge that the promise of immunity had been extended to him he repeated the same facts that he had previously told Mr. Glover and for which the promise had been made. There was not the slightest reason on his part to withhold any information, for he still had faith and trust in the promise of the Government, made through one of its responsible officers. The grand jury was then in session. It would be an insult to the common sense of this court for the prosecution to contend that Rossi begged and pleaded to go before the grand jury. What for? What had he to gain thereby? He had already received immunity from his disclosures to Glover and Bryon. It would merely mean a repetition of his statements to those officers. It stands to reason that when he did appear before the grand jury he did so at the "suggestion" of the prosecuting officer, who naturally desired his aid to place sufficient facts before the grand jury to bring about the present indictment against all the defendants named

therein. There was no reason for Mr. Rossi to manifest any reluctance about appearing before the grand jury. He appeared and repeated the same story that he had told Glover and Bryon, still relying upon the promise of immunity, and still having faith in the Government. If the prosecuting attorney intended to use his admissions against him he should have in all fairness and justice explicitly advised him that he could no longer rely upon the promise of immunity, and that if he offered to make any further statement it could be used against him. This the prosecuting attorney did not do. It might be appropriate at this time to call the learned prosecutor's attention to the following advice of District Judge Cushman to be found in the case of *U. S. vs. Kallas*, 272 Fed. 753:

"While it may be that many know of their rights, and, even when in prison, have the will and courage to stand upon them, there certainly are others who do not. The safer and better course to pursue is to require evidence that each and every prisoner has been advised of his right to remain silent, and warned of the danger in speaking, before any statement is admitted, rather than enter upon a more or less speculative inquiry as to whether the statements of accused were made voluntarily or not. In the nature of things, it often happens, not only upon the examination in the jail, but upon that in court regarding the circumstances of the inquiry at the jail, that there are many against one, the accused. Whether it arises from zeal or prejudice, born of their calling, the nature of the accusation or situation, or all of these and other things, it does not matter—consciously or unconsciously, upon such an inquisition, the police, and officers having

similar duties, often array themselves against the accused."

It comes with ill grace from the Government after having broken faith with Rossi by indicting him, which it did in spite of Mr. Glover's promise not to do so, to now insist, in addition, upon using his statements to the grand jury as evidence against him under the pretense that it was voluntarily made. It would be a travesty upon the very justice that the Government has thus far with just pride invoked and displayed in all their prosecutions. The prosecuting officials, zealous or otherwise, should not be permitted to play fast and loose with the high and lofty principles of fair play, no not even to bring about the conviction of an alleged dealer in War Savings Stamps.

In the case of *Silverthorne Lumber Company vs. U. S.*, 251 U. S. 385, there had been an unlawful search by the prosecution of defendant's office, and papers seized. Copies were made by the prosecution, and the originals, on application of the defendant, ordered returned to them; but the court impounded the copies. The prosecution thereafter subpoenaed the defendant company to produce the originals, and, for their refusal to obey, the sentence of contempt was imposed. In that case the court says:

"The Government now, while in form repudiating and condemning the illegal seizure, seeks to maintain its right to avail itself of the knowledge obtained by

that means which otherwise it would not have had. The proposition could not be presented more nakedly. It is that although, of course, its seizure was an outrage which the Government now regrets, it may study the papers before it returns them, copy them, and then may use the knowledge it gained to call upon the owners in a more regular form to produce them; that the protection of the Constitution covers the physical possession, but not any advantages that the Government can gain over the object of its pursuit by doing the forbidden act. *Weeks v. United States*, 232 U. S. 383, to be sure, had established that laying the papers directly before the grand jury was unwarranted, but it is taken to mean only that two steps are required instead of one. In our opinion such is not the law. It reduces the Fourth Amendment to a form of words. 232 U. S. 393. The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court but that it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the Government's own wrong cannot be used by it in the way proposed."

VII.

PREJUDICIAL TESTIMONY OF DEFENDANT'S ADMISSIONS TO MR. BRYON.

Assignments 3, 4, 5 and 12 are predicated upon the admissions made by the defendant to Mr. Bryon and transcribed by Miss Doeltz. At the time the Government introduced this evidence, defendant objected on the ground that it had been obtained by the promise of

immunity theretofore accorded to the defendant and was, therefore, involuntary. The court overruled the objection. Subsequently and at the close of the case the court ordered this testimony to be stricken out. It is the contention of the defendant that the prejudice already aroused by this damaging evidence was not and could not have been removed from the minds of the jury, and that, therefore, the court should have granted the defendant's motion to withdraw a juror or to grant a new trial. A bare reading of the alleged admissions made will suffice to indicate the highly prejudicial character of this testimony. The prosecution certainly knew that this testimony was of an involuntary character, and should never have imposed upon the court as it did by introducing evidence that was calculated and plainly intended to prejudice the jury against Rossi at the very outset of the trial.

As to the practice on the admission of this testimony, the rule is stated in Wharton on Criminal Evidence, 1294, in the following language:

“When it becomes necessary, in the course of a prosecution, to offer a certain class of evidence, and the proposing counsel knows that its admission will be disputed, and that therefore a ruling of the trial judge will be required, before the evidence is properly admissible, a careful regard for orderly procedure demands that the details of the offer should not be stated in the hearing of the jury. This caution in no way impugns the intelligence or the impartiality of the jurors, but only seeks to safeguard the accused against the trial of the charge

upon irrelevant testimony. The jurors, lacking the experience and training necessary to distinguish between the relevant and irrelevant evidence, may take as true and relevant the evidence sought to be offered, even though it should be excluded by the judge. This general rule is often violated, innocently enough perhaps, but with most serious results, where the proposing counsel makes a preliminary statement to the trial judge as to the evidence which he desires to offer, or shows it in the questions put to the witnesses. It has always been the practice, in such exigencies, for the proposing counsel to present the offer in writing, without reading it aloud, to the trial judge and the opposing counsel, and if argument is desired, to afford the court a chance to excuse the jury before making an oral statement and an argument upon the same. The same general rule should govern the putting of questions to witnesses. Commenting on the repeated putting of improper questions to the defendant, the supreme court of Michigan says: 'Had the defendant declined to answer them, an unfavorable influence upon the minds of the jury must inevitably have been produced.' A list of questions which assume the existence of damaging facts may be put in such a manner, and with such persistency and show of proof, as to impress a jury that there must be something wrong, even though the prisoner fully denies it and there is no other evidence."

"These rules should be applied with great strictness when the offer concerns confession evidence. Such evidence is of a class that its very designation indicates its momentous importance, and any wilful disregard of this rule, or any effort to get such evidence before the jury, by innuendo or indirection, and before the trial judge has had opportunity to pass upon its relevancy and admissibility, should be visited with the severest judicial censure."

In *People vs. Abell*, 71 N. W. 508, the prosecuting attorney stated to the court in the presence of the jury that he offered to prove by the proposed witnesses certain testimony which he thereupon related. This testimony was wholly incompetent and the court so held. But in reply to the objection of defendant's counsel as to the prejudicial remarks of the district attorney, the court stated that counsel had the right to state what he proposed to prove. The appellate court in holding that this was error said:

"While the jury were told that the statement was made for the benefit of the court and that they should disregard it, yet it may well be imagined that such a statement coming from the court would have its effect with them."

To like effect is the case of *Leahy vs. State*, 48 N. W. 390, wherein the court said it was error to have allowed the prosecuting attorney to make the statement which he did in the presence of the jury. It is the duty of the prosecuting attorney to conduct the trial of a criminal case according to established rules. He acts in a semi-judicial capacity and is supposed to act from principle and without bias or prejudice. The state has guaranteed to everyone a fair trial and such trial cannot be had if the prosecution can resort to tricks to secure a conviction. If such practice was sanctioned it would result in many cases of the conviction of innocent persons.

In the case of *Porter vs. Throop*, 11 N. W. 174, the Court said:

“That the opening to the jury may be so unfair in the statement of irrelevant facts and so well calculated to prejudice the jury as to justify setting aside the verdict obtained by the party making it.”

In the case of *Ellis vs. State*, 3 Southern 188, the Court said:

“When a confession of the defendant is offered in evidence, the court should ascertain by preliminary examinations conducted out of the presence and hearing of the jury, if requested, whether the proposed confession was made voluntarily and if there is a reasonable doubt against its being free and voluntary it should be excluded from the jury.”

In the case of *People vs. Wells*, 34 Pacific 1078, the district attorney asked witnesses a prejudicial question to which objection was made and sustained. The court reversed the judgment of conviction on this ground. In its opinion the court said:

“There was not the slightest excuse for asking this question. What then was its purpose? Clearly, to take an unfair advantage of the defendant by intimating to the jury something that was either not true or not capable of being proven in the manner attempted and the wrong was not remedied because the court sustained the objection to the question. Counsel undoubtedly knew beforehand that the objection would be sustained. It would be an impeachment of the legal learning of the counsel for the people to intimate that he did not know the question to be improper and therefore wholly un-

justifiable. Its only purpose therefore was to give to the jury a statement under the guise of a question that would prejudice the defendant."

In the case of *Kirk vs. Territory*, 60 Pacific 797, the Court stated the rule to be as follows:

"We think a correct practice, and one sustained by sound reason and weight of authority is that when testimony is offered to prove a confession and objection is made to the competency of evidence, the court should withdraw the jury. If the court, after hearing the testimony on the competency of the confession decides it was not proper to be shown, then error might be predicated upon the improper evidence before the jury."

It is nothing but plain mockery to claim that the defendant was not prejudiced because the court excluded this testimony. When was this testimony excluded? Was it when first the offer was made? No, it was only after all the testimony had been put before the jury, as the prosecution intended it to be. The poison had already been injected. The bell had already been rung. The damage had already been done, and nothing that the court could have said could in the slightest degree remove the effects of the poison, unring the bell, or undo the damage. As stated by the Court in the case of *Harold vs. Okla.*, 169 Fed. 47:

"Such a practice is nothing but a farcical evasion of the rule of evidence and of the constitutional guaranty which exclude an involuntary confession. A decision that such a confession is incompetent and inadmissible is of little avail to a defendant after officers of the law have

testified to the method of its procurement and to much of its contents, and the only rational way to protect and enforce the rights of the accused is to exclude from the jury all the evidence relative to the competency of the confession, at least until the court has found it competent."

In Zoline's Federal Criminal Law, Section 335, it is stated:

"When confessions are improperly admitted the defendant will be entitled to a new trial."

VIII.

ERROR IN INSTRUCTIONS

(a) Assignment 22 is based upon the refusal of the court to leave to the jury the question of determining whether the confession made by Mr. Rossi before the grand jury was voluntary or not. The defendant requested the court to give the following instructions:

"If you believe that the confession made by Mr. Rossi to Mr. Young, foreman of the grand jury, was traceable to the hope inspired by the assurances made by Mr. Walters and Mr. Glover in the first instance, and that Mr. Rossi at the time was relying upon such assurances when he made the confession to Mr. Young, then such confession is inadmissible and you should disregard it. It is not material whether Mr. Young knew that Mr. Glover had inspired the hope in the mind of Mr. Rossi provided there was a casual connection between the hope aroused and the confession. The fact that the confession was not made to the officer arousing

that hope is immaterial. When an improper influence has been exercised it becomes the duty of the government to show that it has been removed before this subsequent confession can be held admissible." (Trans., p. 242.)

The instruction thus requested was formulated from a like instruction authorized and approved by the decision of *Conley vs. State*, 7 S. W. 257. Not only did the court refuse to give this instruction, but instructed that as a matter of law that said confession was voluntary and should be considered by them as such. The instruction assigned as error XVII is quoted below:

"I instruct you, however, that the statement made by Rossi in giving evidence (before the grand jury) is not to be so disregarded by you. There is evidence tending to show that Rossi appeared before the grand jury voluntarily and of his own accord, and, although warned that whatever statement he might make would be used in evidence against him, he, notwithstanding, gave such evidence without insisting upon his immunity. The evidence, therefore, of Mr. Young, the foreman of the grand jury, was competent and pertinent to prove the admissions of Rossi with reference to the stamp transactions, and you are to regard these admissions for whatever tendency they may have, if any, to show Rossi's connection with the alleged conspiracy." (Trans., p. 240.)

In the case of *State vs. Rein*, 49 Fed. 700, the court said that where there is evidence of a confession before a jury, it is for them to determine from all the facts whether the confession was voluntary. Accordingly where it is applicable to the case, it is error for the court

to refuse to instruct the jury in compliance with the written request to do so, that if the accused made a confession under an inducement of hope previously held out by persons other than those to whom it was made, such confession, although not in the presence of those holding out the inducement, should not be considered as evidence.

To like effect is the case of *State vs. Ellis*, 3 So. 188, wherein the court held it was error to refuse to give this instruction to the jury:

“That if the jury believed from the evidence that the confession of defendant was brought about by fear, they will disregard it.”

The trial judge in this case apparently was undecided, as evidenced by his changing opinion upon the question whether or not Rossi's subsequent statement to the grand jury was voluntary or involuntary. It would seem that this case presents a most striking example for the necessity of the giving of the instruction requested. It had resolved itself into a question of fact. The Government had the burden of establishing the fact that the inducing cause that impelled Rossi to make his confession to Glover had been removed when he made his subsequent confession to the grand jury. It was therefore for the jury to say under all the circumstances of the case whether that burden was met.

As stated in Zoline's Federal Law, page 274:

“Where there is a conflict of evidence as to whether a confession is or is not voluntary, if the court decides that it is admissible, the question may be left to the jury with the direction that they should reject the confession if upon the whole evidence they are satisfied it was not the voluntary act of the defendant.”

As stated in Wharton's Criminal Evidence, page 1422:

“In deference to a line of respectable authorities, it should be here observed that where the confession testimony is conflicting, that is, the testimony adduced as showing the circumstances under which the confession itself was obtained, the question of the character of the confession may be left to the jury.”

As stated in the case of Wilson vs. U. S., 162 U. S. 613:

“When there is a conflict of evidence as to whether a confession is or is not voluntary, if the court decides that it is admissible, the question may be left to the jury with the direction that they should reject the confession if upon the whole evidence they are satisfied it was not the voluntary act of the defendant.”

In any event, the defendant especially requested the giving of this instruction. A different situation would be presented if the defendant had not made such a request, but having particularly done so, the authorities seem to indicate that the refusal by the court to give such an instruction is error. As stated in Zoline's Federal Law, page 278:

“If requested by the defendant, the court should specially instruct the jury upon the subject of the necessity that the confession be found to have been voluntarily made before it could be considered by the jury.”

(b) Assignment XVIII is predicated upon the following instruction given by the court:

“You will inquire whether the stamps were stolen, and if so, whether by either of the defendants. And in this relation I may say to you that the possession of recently stolen property affords a strong inference that the property was stolen by the person having it in his possession.” (Trans., p. 240.)

In this we contend the court erred. The indictment did not charge a conspiracy to buy, receive, steal or give away, possess or deal in stolen property. All that it contemplated was the dealing in altered Government obligations, irrespective of the question whether the Government obligations had been lawfully or unlawfully obtained, which question of itself could have been susceptible of a separate and distinct offense.

The charge as given by the court had the tendency to confuse and mislead the jurors as to the issues they were to determine, and could not help but be prejudicial to the defendant. This is emphasized in the discussion of the assignment next following.

(c) Assignment XX is predicated upon the following instruction given by the court to the jury:

“The next question you ask is this: If defendants thought at the time that they were handling stolen stamps, but did not know they were altered registered stamps, could we find them guilty on this indictment?

“My answer to that is that if the defendants were handling these stamps knowing them to be stolen, and they handled them with intent to defraud the United States, then they would be within the purpose of this indictment.” (Trans., p. 241.)

After the jury had been out for a considerable length of time they returned into court with the inquiry mentioned in this charge. Upon the giving of this instruction as hereinabove quoted the jury retired and shortly thereafter returned a verdict of guilty. It will thus be seen that this charge was most persuasive in securing the result desired by the prosecution.

By these instructions (Assignment of Errors XVIII and XX) the jury was led to believe that the theft of the stamps was an essential ingredient of the offense charged. No argument or citation of authority would seem to be necessary to prove that such was not the case. However, the jury could not help but reach the conclusion that if the defendants, or any two of them, conspired to steal these stamps that therefore they must be guilty of the offense charged, irrespective of the question as to whether or not the stamps were altered. The indictment specifically charges a conspiracy to alter Government obligations, and the intent to defraud naturally flows from such a result. The court should,

therefore, not have given the instruction that it did give, without particularly calling to the jury's attention the necessity of finding that the conspiracy contemplated the alteration of stamps, and nothing else, and that the theft of the stamps was a mere incident of the proof, the existence or non-existence of which fact had nothing to do with the crime charged.

Furthermore, there was no evidence of any conspiracy to steal the stamps, and even if there had been any evidence tending to show that one of the defendants stole the stamps (which would fall far short of proving a conspiracy to steal) that could in no wise be charged to the prejudice of the remaining defendants, particularly when the conspiracy charge did not involve the crime of stealing Government obligations. The only evidence that any defendants stole any stamps was that there were found in the possession of defendant Peterson stamps that had previously been stolen from the Scio State Bank. It is not contended that Rossi conspired with Peterson or with any one else to steal these stamps from the Scio State Bank or from any other institution; nor that any two of the defendants indicted conspired to do so. Why then should the defendant Rossi bear the burden as to the instruction given as to the theft of the stamps when he was in no wise involved in the theft and as a co-conspirator he could in no wise be bound by the acts of Peterson, unless done in pursuance to the conspiracy, which conspiracy by the way was not to *steal*

Government stamps but was a conspiracy to *alter* Government stamps—a marked distinction. As stated in 12 C. J. 641:

“Instructions should be so framed that the jury will not be misled thereby.”

“Instructions predicated upon facts not in evidence are properly refused.”

(d) Assignment XIX is predicated upon the giving by the court of the following instruction:

“Now, gentlemen of the jury, the first question that you propound is the following: Does a stamp simply by being removed from a certificate, said certificate not being registered, become an altered stamp?

“To that I answer: that if the certificate has a stamp attached and the name of the party written upon the certificate, and the stamp thereafter has been removed with intent to defraud, then the defendant would be guilty whether the certificate or stamp was registered or not.” (Trans., p. 241.)

The giving of this instruction is in line with instruction assigned as error XV, reading as follows:

“I further instruct you that a removal of the stamps from the certificates, if done with intent to defraud, would be tantamount to an alteration of a government obligation, and would, in effect, render it a falsely made certificate or obligation within the purview of section 148 of the Penal Code and would constitute a violation thereof.” (Trans., p. 239.)

This was plainly error, assuming the court should be of the same opinion as District Judge Hough, which is

set out in the appendix, in quashing the indictment based upon the charge of conspiracy to alter government obligations by the removal of a War Savings Stamp from a non-registered certificate. This is more fully elaborated upon under the discussion relative to the sufficiency of the indictment.

(e) Error is likewise assigned to the court's failure to give certain requested instructions which are assigned as errors 23, 24, 25 and 26. These are based upon the presumption that District Judge Hough in his interpretation of the counterfeiting statutes as relating to War Savings Stamps and certificates is correct. If correct, then of course the court's failure to give the requested instructions and the giving of instructions inconsistent with same was error.

IX.

RE NEW TRIAL GRANTED TO PETERSON.

According to the transcript of the record, of all the defendants on trial the only two convicted were Peterson and Rossi. The court has recently ordered that the conviction of Peterson be set aside, thereby leaving the case of Rossi undecided. This being a conspiracy charge, it is elementary that one person cannot be convicted alone, particularly where there is no evidence that any persons other than those named in the indictment had joined in the conspiracy. We, therefore, contend that

the court's decision in setting aside the verdict and granting a new trial to Peterson must necessarily operate likewise in the case of Rossi, the only remaining conspirator found guilty. In *Feder vs. U. S.*, 257 Fed. 694, the court held:

"In a prosecution of two defendants for conspiracy to defraud the United States where on a writ of error there must be a reversal of the conviction of one defendant there must also be a reversal of the conviction of the other."

In *Reg vs. Grumpertz*, 9 Q. B. 482, Denman, C. J., said:

"We cannot grant a new trial to one conspirator without granting it to all who are convicted; as we cannot separate the defendants there must be a new trial as to all."

CONCLUSION.

The undersigned begs the indulgence of this court for the length of this brief. The importance of the questions involved rendered it absolutely necessary. To have eliminated from the argument the consideration of a single error would have been unfair to the defendant as well as inviting the assertion on the part of the prosecution that such error had been waived. Not only does counsel refuse to relinquish a single point that has been raised, but earnestly insists that they are all meritorious and deserve the careful consideration of this court.

Whatever may be the differences of opinion existing between the trial judge and counsel as to what constitutes a Government obligation, or what constitutes a material alteration thereof, or what should be the scope and limitation of his instructions, there, nevertheless, appears throughout this record, evidence of the venom of newspapers, evidence of the unfair attitude of the prosecution in introducing involuntary confessions before the jury, and evidence of a most flagrant breach of trust, all of which evidence, while contributing to the conviction of the defendant must remain a blot and disgrace upon that spirit of fair play and justice which should characterize the conduct of Government officials as well as of Government prosecutions.

Plainly and frankly stated, the indictment of Rossi was simply a means of "showing up" W. A. Glover, a secret service agent, who had for twenty years served his Government and its chief executives so as to merit his appointment as head of the Portland office. For some reason he had incurred the ill will of W. R. Bryon, the agent in charge of the Bureau of Investigation of the Department of Justice. Glover had seen fit to promise immunity to Rossi for his aid and information. Glover was an officer in authority and in charge of the particular investigation wherein he sought Rossi's help. Whether wise or unwise, that promise had been made. Whether justified by the circumstances or not the word of the secret service had passed. Up until now that

word had been religiously kept. It had never before been broken. There was no reason for Rossi to question or doubt the efficacy of this promise. He kept faith with the Government. He had a right to believe that the Government would likewise keep faith. Subsequently Glover was replaced by Bryon and Rossi was made the unfortunate victim of the ill-will existing between those Government officials. Glover had to be shown that his word meant nothing. Glover was so shown, but only at the sacrifice of the Government's honor, for the faith replaced in it was violated. Bryon had Rossi to appear before him. The defendant felt safe and secure in the promise of the Government. About the same time he was brought before the grand jury. There still was no cause for alarm. He had repeated his testimony to Glover and Bryon. He had promised Glover information that would lead to the indictment of the parties involved in the transaction. He naturally expected that his appearance before the grand jury was in line with his promise. Not only was his faith trampled upon and the promise of immunity from prosecution violated by his indictment at the hands of the grand jury, but when brought into court as a defendant, an attempt was even made, and it was successful, to bring about his conviction by his own utterances made under the holy promise of immunity. The Government has no reason to be proud of a conviction obtained by such measures.

It would be idle to speculate upon the chances of the Government to convict Rossi without the aid of his own incriminating testimony. Suffice to say, it placed a weapon in the hands of the prosecution that it would never have received except for the promise it so solemnly gave, and which it so ruthlessly broke. Whatever might be the opinion of a fair-minded person of one who after promising immunity from prosecution deliberately sets about to indict and prosecute him, at least the defendant had the right to expect that when the Government presented its evidence it would not avail itself of his own admissions given under such promise. That the defendant was grossly deceived goes without question; that he was prejudiced by the introduction of this testimony is plain. In all fairness and justice he is entitled to a new trial, limited in scope to the rigid rules of evidence that forbids the use of admissions obtained under the promise of immunity.

For the various reasons hereinbefore stated and discussed, the judgment should be reversed.

Respectfully submitted,

BARNETT H. GOLDSTEIN,

Attorney for Plaintiff in Error.

APPENDIX

*District Court of the United States—Southern District
of New York.*

UNITED STATES OF AMERICA

Indictment 7828—Docket C. 20-251.

vs.

PAUL SACKS.

UNITED STATES

Indictment 8269—Docket C. 21-170.

vs.

HERMAN JANOWITZ, HERMAN OESTREI-
CHER, HENRY GOLDSTEIN, ETTA LE-
VINE, JULIUS ROTH and JOHN C.
DALTON.

The case of Sacks having been called, for trial, defendant moved in open court to quash the indictment on the ground that upon the true construction of the statutes suggested as authorizing the prosecution,—Sacks could not be guilty.

The case of Janowitz *et al* being likewise called on the day being set for trial, defendants with the consent of the prosecutor moved to withdraw their pleas of not guilty and offer a demurrer to the indictment.

The motion was granted, and on a day subsequent both the motion to quash and the demurrer were argued at length.

The cases are thought to be typical of a number of prosecutions now pending in this district, and considering the nature of the criminality alleged and the diversity of opinion that has arisen thereupon, it has seemed best to permit, and indeed facilitate, the prosecution of the legal questions in such shape that if decided adversely to the prosecution, authoritative review will not be only possible but expeditious.

The several counts of these indictments rest not only upon the sections of the Criminal Code hereinafter pointed out, but on the 6th section of the Act of September 24, 1917, (which authorized "War Saving Certificates") and the 2nd section of the Act of September 24, 1918, but upon a series of "Department Circulars" issued from the office of the Secretary of the Treasury and of which this court has taken judicial notice.

These circulars are No. 94, or War Saving Circular No. 1, dated November 15, 1917; No. 108, or War Saving Circular No. 8, dated January 21, 1918; No. 101, War Saving Circular No. 5, dated February 19, 1918, and No. 123, dated December 18, 1918.

The first and second counts of the Sacks indictment allege a violation of Section 148 of the Criminal Code in that Sacks with intent to defraud *altered* an obliga-

tion of the United States, to-wit: a War Saving Certificate, by tearing a war saving stamp of 1918 therefrom.

The second count of the Janowitz indictment alleges that the defendants conspired to violate Section 148 in that they purchased certificates of the series both of 1918 and 1919 from persons not authorized to sell same by the Secretary of Treasury; that they also obtained war saving certificates to which stamps had never been affixed and on which no owner's name had ever been written, and that they intended and agreed to detach the stamps from the purchased certificates, to the end that in the name of some other person other than the defendants the certificates might be presented for redemption at a Post Office and at a date prior to maturity.

Thus Sacks is accused under what is usually called the counterfeiting statute, and Janowitz *et al* are accused of conspiring to commit the same offense.

The third count of the Sacks indictment rests on Section 151 of the Criminal Code, and charges the defendant with keeping in possession with intent to defraud an altered obligation of the United States, that is to say a piece of pasteboard obviously torn from a certificate of the series of 1918 and having three stamps affixed. The original documents said to have been forged or altered by Sacks are annexed to and made a part of the indictment against him.

The first count of the Janowitz indictment charges under Section 37 of the Criminal Code a conspiracy to defraud the United States by doing exactly the same things as are specified in the second count to constitute a conspiracy to commit an offense under Section 148.

The scienter as to fraud is thus set forth:

“And the defendants would and did then and there well know that the United States was not obligated to pay them money for the said purchased certificates for the said purchased stamps or the said blank certificates, and that the said purchased certificates, the said purchased stamps and the said blank certificates were worthless in their hands, and that they were not, that not one of them was entitled to receive payment therefor from the United States at or before maturity thereof, and that the United States was not obligated to pay them or any one of them therefor at or prior to maturity thereof.”

Joseph A. Seidman for Sacks;

David Goldstein and Aiken A. Pope for Janowitz,
Oestreicher and Goldstein;

John McKim Minton, Jr., and Joseph F. Curren for
Levins;

Francis G. Caffey, U. S. Attorney, and James W. Osborne, Special Assistant to the Attorney General,
for the United States.

MEMORANDUM DECISION

The words of the Act of Congress especially invoked in this matter are that "It shall not be lawful for any one person at any one time to hold War Saving certificates to an aggregate amount exceeding \$1,000", and the further provision: "The Secretary of the Treasury may under such regulations and upon such terms and conditions as he may prescribe, issue * * * stamps to evidence payment for or on account of such certificates." It was under this statute that the issue of 1918 was put forth; the only material difference as to the issue of 1919 was an amendment of the act declaring that "It shall not be lawful for any one person at any one time to hold War Saving certificates of *any one series* to an aggregate amount exceeding \$1,000."

Department circulars Nos. 94, 101 and 108 may reasonably be taken from their date to apply to the issue of 1918. Circular No. 128 is the announcement of the certificate series of 1919, but I do not think that circular changed the material regulations previously issued and affecting all War Saving certificates.

I have assumed that all these circulars are to be treated as Treasury regulations, although only one of them (No. 108) is called by that name.

Circular 94 declares that a War Saving certificate of the series of 1918 will be an obligation of the United

States when and only when "at least one stamp is affixed thereto; but the Secretary "offers for sale" War Saving certificates payments for or on account of which "must be evidenced by" stamps which "are to be affixed thereto."

It is declared that no certificate will be issued unless at least one stamp shall at the time be purchased and affixed thereto, but "no additional charge" will be made for the certificate itself. It is required that the name of the owner of each certificate must be written thereupon "at the time of the issue thereof".

It is then declared by No. 94 that "War Saving certificates are not transferable and will be payable only to the respective owners named thereon" except in events not now material. I think these were all of the instructions, regulations or rules in existence at the time stamps were first put on sale.

No. 108, which is formally entitled as a "Treasury regulation," contains in the 14th paragraph the language thought to be most important in this litigation.

It is by that rule provided that if any person receives certificates in excess of an aggregate of one thousand dollars maturity value *in any lawful manner*,—the excess amount shall be immediately surrendered at a Money Order Post Office and be paid for at their then value; but

“In any other case if it shall appear at the time certificate is presented for payment that the person presenting the same holds certificates to an aggregate amount exceeding a thousand dollars maturity value, the Postmaster shall refuse payment of all certificates in excess of such amount and shall demand surrender of certificates held by such owner until the holdings of such owner are reduced to a thousand dollars maturity value. The Postmaster shall make appropriate notation on certificates so surrendered and shall forward such certificates to the Third Assistant Postmaster General for transmission to the Secretary of the Treasury. *Such certificates shall have no validity for any purpose.*”

Under these rules or regulations and the statute it has been admitted on this argument that a War Saving stamp is property in the ordinary sense of the word; that it may pass from hand to hand like any other similar piece of property.

Yet it is said that this property has no value in and of itself; it is but a receipt for a certain amount of money; but when it is affixed, not to *any* certificate of the corresponding series, but to a certificate bearing the name of the person who obtained it from an agent of the Treasury and still owned by that person, it becomes an integral, irremovable portion of an indissoluble obligation of the United States.

The remainder of the Treasury or prosecutor's position is that if by purchase one accumulates certificates bearing stamps in excess of a thousand dollars maturity value, such excess is subject to a confiscation if the Post-

master can get hold of it; but in any event the excess certificates "shall have no validity for any purpose."

Applying these regulations to these indictments it is observable that in the Sacks indictment there is no effort to apply, and that instrument bears no relation to, regulation No. 14. It is not alleged that Sacks had or tried to get more than a thousand dollars worth of certificates of the series of 1918 (maturity value). The proposition is baldly that when Sacks removed a stamp from a certificate bearing a name not his own, and did it "with intent to defraud," he became what is commonly called a counterfeiter under Section 148. And in the third count it is alleged in substance that when Sacks had in possession "with intent to defraud the United States and with intent to pass and sell the same" a piece of pasteboard having certain stamps upon it, he was criminally possessed of a counterfeited obligation of the United States under Section 151.

In other words the excess proviso of the Treasury regulation has no application to the Sacks indictment.

The Janowitz indictment is more subtle, for both counts allege in substance a business scheme, viz: the purchase of war saving certificates with intent to detach stamps therefrom and use them upon other certificates bearing other names.

But nowhere is it alleged as a part of the conspiracy that any member of the Postal force was to be corrupted

in order that the defendants might procure money for any certificates either before or at maturity. The proposition baldly is that purchased certificates and the stamps affixed thereto were worthless for any purpose in the hands of the purchaser, no matter whether the amount of such purchased certificates was small or great; the proposition is that, once affixed to a certificate, the united stamp and pasteboard became sacrosanct and cannot be disunited; and the moment such legal entity passes from the hands of the original holder (by purchase at all events) to the hand of another it crumbles into legal dust and becomes, in the language of the Janowitz indictment, "worthless in their hands" (i. e. purchaser's hands), and so worthless that payment could never become due whether "at or before maturity."

It may here be noted that the language of the stamp of the series of 1918 is this: "United States War Savings Certificate Stamp. When affixed to a certificate, Five Dollars will be payable January 1, 1923."

One other argument has in argument at this bar been admitted all round, viz: That when Congress said that it should "Not be lawful" for any one person at any one time to hold more than a thousand dollars worth of War Saving certificates, Congress did not make such holding a crime.

To me it appears very plain that the foregoing elements of discussion produce the following problems:

(1) Do the rules of the Treasury prohibit so as to render valueless in the hands of the transferee, War Saving Stamps—as distinct from the certificates or pasteboards to which they are attached?

(2) If the Treasury Rules are to be interpreted as going this far, is their violation criminal?

(3) If the rules do go as far as above indicated and the intent thereof was to make their violation criminal, are such rules so interpreted with the statutory power of the Secretary of the Treasury?

(First) It appears to be plain that neither of the counts in the Sacks indictment, nor the second count in the Janowitz indictment requires the Treasury regulations to be interpreted as taking all value out of the transferred stamps.

Indeed, the very allegations that the removal of a stamp constitutes alteration within the counterfeiting act seems necessarily to imply a value in the thing removed.

But the first count of the Janowitz indictment plainly invokes that very wide definition of the phrase “defraud the United States” which received authoritative statement in *Hass vs. Henkel*, 216 U. S. 462, and it is said (in substance) that it is a lawful function of the Treasury department to prevent the United States being compelled, or even requested, to redeem a War

Saving stamp in other manner than for the person and in the manner preferred by the Treasury. Wherefore, it was a lawful exercise of the regulatory power conferred by the statute to destroy and destroy utterly all property value in a transferred certificate, and therefore in a transferred stamp attached thereto.

It cannot be denied that such destruction of property rights is a possible exercise of congressional power; Section 3477 Revised Statutes as interpreted in *Re Hurd Co.*, 257 F. R., 722 and cases cited, proves this.

In my opinion, therefore, the regulation prohibiting transfer, taken in conjunction with the 14th section of Circular 108, is an effort by the Secretary through departmental regulations to produce exactly the conditions wrought by Congress under the section of the Revised Statutes last above referred to.

Second, if the Treasury regulations thus interpreted are reasonable, appropriate and consistent with the Act of Congress their violation is as much a transgression of the statute as if the regulatory provision had been written in the act. This seems to me the result of *United States vs. Morehead*, 243 U. S. 607, and *United States vs. Smull*, 236 U. S. 405.

Applying the extreme interpretation which seems necessary to sustain the first Janowitz count to the crimes averred under Criminal Code Sections 146 and 151, it must follow that it is as much counterfeiting or

forging to put a transferred stamp on a certificate as it is to detach a stamp from a certificate and thereby alter the same.

This extreme interpretation must I think be adopted throughout, because the regulations cannot be so interpreted in one breath as to sustain a count that rests only on Section 37, and then softened when the extreme holding is not necessary to sustain other counts.

Third, the preferred statement of the prosecutor in support of especially Section 14 of Circular 108 is that a stamp in and of itself is nothing; it has no value except as a receipt.

From this flows the assertion that when that receipt is affixed to a pasteboard which by itself has no value whatever, the two things put together become an obligation of the United States not dissimilar from a bond or a Treasury note, except that the quality or assignability or transferability is denied to it.

It is said that even if the stamp, *per se* worthless, may pass from hand to hand, it becomes when affixed to the certificate like the ink upon a note and its removal is as much an alteration as would be the erasure of that ink.

To me this is an ingenious but fallacious arrangement of words. To deny value to the War Saving stamp is against common sense and contradictory to a

course of business vigorously pursued for the last few years, which has succeeded in forcing these stamps into the possession of people whom it is sarcasm to call "investors," and who would be surprised beyond measure to be told that their stamps had no "value."

When Congress authorized the issuance of "stamps to evidence payments for or on account of such certificates" and did not deny to the stamp holders the right to transfer such right existed. The Treasury has sought to take it away by making the certificates non-transferable. Assuming that power exists to prohibit transfer of the certificates, I am wholly unable to perceive that there is any congressional authority for the Secretary's prohibiting the transferability of the stamps affixed to the certificates.

Nowhere is it said that any particular stamp shall evidence a payment on any particular certificate.

This I think is the gist of the matter: Is a regulation which as interpreted, in terms takes away a property right in a manner not specifically authorized by statute, a valid rule? I cannot persuade myself that such is the case.

Congress has certainly not done that which was held sufficient to make a crime of rule violation in *United States vs. Grimaud*, 220 U. S. 506. The *Smull* and *Morehead* cases, *supra*, do, I think, hold that where the

manner of obtaining a grant is committed to a department, that department may regulate the procedure to obtain the same, and if a violation of that procedure runs counter to any criminal statute of congress, then violation of the regulation is punished by the statute, and so within the Grimaud case, *supra*.

But the prohibition against transfer of stamps affixed or unaffixed is far more than a procedural regulation. A stamp is a thing of value, bought and paid for, and to deprive it of the quality of assignability is a diminution of lawfully existing property rights for which in my judgment congressional action alone will suffice.

One further consideration is peculiar to the third count of the Sacks indictment.

It is not alleged that Sacks tore up or tore off a piece of pasteboard bearing stamps from a War Saving Certificate. It must be assumed that he did not do it, and I think it must even be assumed (in favor of innocence) that the holder and owner pursuant to Treasury regulations of the certificate from which the place was torn, did the deed himself. The necessary implication of this third count is that such an act by the owner of the obligation constituted a violation of Section 148, for only by that holding could Sack's possession be a violation of Section 151—in manner and form as alleged.

It follows, therefore, that by Treasury regulations alone an owner who destroys an obligation (for this certificate was certainly destroyed as such) violates Section 148, unless he also destroys the stamps which are just as much his after destruction of the pasteboard as they were before—unless, of course, the Treasury Department can diminish his property right.

That Department has endeavored to diminish such property right, and indeed to destroy it utterly unless the right is exercised as per regulation. It does not seem to me that this is a method of carrying out the statute as written. It is additional and very drastic attempted legislation.

For these reasons the motion to quash is granted and the demurrer sustained.

Feb. 27, 1920.

No. 3710

IN THE
**United States Circuit Court
of Appeals**

For the Ninth Circuit

ANGELO H. ROSSI,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA.,

Defendant in Error.

BRIEF OF DEFENDANT IN ERROR

Upon Writ of Error to the United States District
Court for the District of Oregon

LESTER W. HUMPHREYS,

United States Attorney for Oregon.

For Appellant.

JOHN C. VEATCH,

Assistant United States Attorney for Oregon,

For Defendant in Error.

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F. D. MONCKTON

INDEX

	Page
CASES CITED:	
Ackley vs. United States, 200 Fed. 217.....	3
Bram vs. United States, 168 U. S. 532.....	13
Garland vs. State of Washington, 232 U. S. 642	18
Holt vs. United States, 218 U. S. 245.....	16
Hopt vs. Utah, 110 U. S. 574.....	14
Knauer vs. United States, 237 Fed. 8.....	4
Lew Moy vs. United States, 237 Fed. 50.....	4
Shidler vs. United States, 257 Fed. 620.....	20
United States vs. Dahl, 225 Fed. 909.....	4
United States vs. Eccles, 181 Fed. 906.....	2
Williamson vs. United States, 207 U. S. 425...	4
STATUTES CITED:	
Section 147 United States Penal Code.....	10
Section 148 United States Penal Code.....	6
Section 151 United States Penal Code.....	6
Section 154 United States Penal Code.....	6
Act of September 24, 1917; 40 Stat. L. 291....	6
Treasury Department Circular Number 94....	7
Treasury Department Circular Number 108...	8
Postoffice Department Circular Number 3348..	10

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Assistant United States Attorney for Oregon,
For Defendant in Error.

The plaintiff in error, hereinafter referred to as the defendant, sets out in his transcript of record thirty-four assignments of errors. In considering these we will endeavor to group them according to the questions involved.

I.

That the indictment is duplicitous in that it charges more than one crime, defendant's assignments I and XXXII.

The indictment charges that the defendants conspired to "commit the acts made offenses and crimes by the laws of the United States, to-wit: by sections 148, 151 and 154 of the Penal Code of the United States, and to defraud the United States." (Trans. p. 5.) Section 37, of the Penal Code makes it an offense "either to conspire to commit any offense against the United States, or to defraud the United States in any manner or for any purpose." The fact that the unlawful combination contemplated the consummation of acts that would constitute more than one violation of the criminal laws does not charge more than one offense. It is the conspiracy and not the overt acts done in pursuance thereof that is denounced by the statute. (United States vs. Eccles, 181 Fed. 906.) Nor is the charge in the indictment that the conspiracy was to commit certain offenses and to defraud a charge of more than one crime. Where the statute denounces several things as a crime, the different things in the statute be-

ing connected by the disjunctive "or," they may be joined in the same indictment by the conjunctive "and" without rendering the indictment bad for duplicity and a conviction will be sustained if the testimony shows the defendant to be guilty of either one or the other thing charged. (Ackley vs. United States, 200 Fed. 217.)

II.

That the indictment does not state facts sufficient to constitute an offense against the United States.

This part of assignment number I involves the question of whether or not the scheme or conspiracy alleged in the indictment would constitute a violation of sections 148, 151 and 154 of the Penal Code and includes assignments number XV, XVI, XIX, XX, XXIII, XXIV, XXV and XXVI.

The conspiracy itself is the gist of the offense and the sufficiency of the indictment is to be determined by the allegations charging conspiracy and not by the allegations charging the offenses to be committed in pursuance of the conspiracy. The offenses to be committed in pursuance of the conspiracy may be charged in general terms sufficient to inform the defendant of the charge against him and need not be described with the same accuracy of detail that would be required in an indictment for the commission of the offense itself.

"The indictment in question, it is urged, is fatally defective by reason of an omission to directly particularize various elements,

claimed to be essential to constitute the offense of perjury and other elements necessary to be averred in respect of the alleged suborners.

"This is based upon the assumption that an indictment alleging a conspiracy to suborn perjury must describe not only the conspiracy relied upon, but also must, with technical precision, state all the elements essential to the commission of the crimes of subornation of perjury and perjury, which it is alleged is not done in the indictment under consideration. But in a charge of conspiracy the conspiracy is the gist of the crime, and certainty, to a common intent, sufficient to identify the offense which the defendants conspired to commit, is all that is requisite in stating the object of the conspiracy.

Williamson vs. United States, 207 U. S. 425.

"In all charges of conspiracy, the conspiracy itself is the gist of the offense, and where a conspiracy is charged to violate the laws of the United States, if the conspiracy be specifically alleged, it is not necessary to allege the details of the law of the United States to be violated with the accuracy it would be if the charge were directly of the violation of the law of the United States and not of the conspiracy to violate it."

United States vs. Dahl, 225 Fed. 909.

Lew Moy vs. United States, 237 Fed. 50.

Knauer vs. United States, 237 Fed. 8.

The charging part of the indictment (Trans. pp. 4-9) alleges that the defendant and others conspired

to commit the acts made offenses and crimes by sections 148, 151 and 154, of the Penal Code and to defraud the United States; that they were to falsely make and alter certain obligations and securities of the United States, to-wit: War Savings Certificates and War Savings Certificate Stamps, and to pass, publish, utter and sell said altered obligations and securities, and to have and keep the same in their possession and conceal the same with the intent to defraud the United States and others, and to buy, sell, exchange, transfer and deliver such falsely made and altered obligations with the intent and purpose that they be passed, published, and used as true and genuine, and to defraud the United States by presenting to the United States and causing the United States to redeem and purchase such falsely made and altered obligations and securities; that this scheme was to be carried out by certain conspirators stealing War Savings Certificates and War Savings Certificate Stamps and by removing the stamps from the certificates and by removing the registration and identification number from the face of the stamps; that other conspirators were to attach the stamps so removed and so altered to blank certificates and to sell, exchange, and pass the same, etc.

If this scheme, as set forth in the indictment, would be a violation of sections 148, 151 and 154 of the Penal Code and would defraud the United States, the indictment is sufficient, even though the language used in describing the scheme would not be sufficient in an indictment for a violation of the

above sections.

Section 148 of the Penal Code provides:

“Whoever, with intent to defraud, shall falsely make, forge, counterfeit, or alter any obligation or other security of the United States shall be fined not more than five thousand dollars and imprisoned not more than fifteen years.”

Section 151 of the Penal Code provides:

“Whoever, with intent to defraud, shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or shall bring into the United States or any place subject to the jurisdiction thereof, with intent to pass, publish, utter, or sell, or shall keep in possession or conceal with like intent, any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than five thousand dollars and imprisoned not more than fifteen years.”

Section 154 of the Penal Code provides:

“Whoever shall buy, sell, exchange, transfer, receive, or deliver any false, forged, counterfeited, or altered obligation or other security of the United States, or circulating note of any banking association organized or acting under the laws thereof, which has been or may hereafter be issued by virtue of any Act of Congress, with the intent that the same be passed, published, or used as true and genuine, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.”

War Savings Certificates are obligations and securities of the United States. Section 6, of the Act of September 24, 1917; 40 Stat. L. 291, provides:

"Sec. 6. That in addition to the bonds authorized by section 1 of this Act and the certificates of indebtedness authorized by section 5 of this Act, the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of this Act and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor at such price or prices and upon such terms and conditions as he may determine, war savings certificates of the United States on which interest to maturity may be discounted in advance at such rate or rates and computed in such manner as he may prescribe. Such war savings certificates shall be in such form or forms and subject to such terms and conditions, and may have such provisions for payment thereof before maturity, as the secretary of the Treasury may prescribe. Each war saving certificate so issued shall be payable at such time, not exceeding five years from the date of its issue, and may be redeemable before maturity, upon such terms and conditions as the Secretary of the Treasury may prescribe . . . The Secretary of the Treasury may, under such regulations and upon such terms and conditions as he may prescribe, issue, or cause to be issued, stamps to evidence payemnts for or on account of such certificates.

Pursuant to this Act, the Secretary of the Treasury issued certain regulations, among which are the following contained in Treasury Department Circular No. 94:

"A United States war Saving Certificate, Series of 1918, will be an obligation of the United

States, when, and only when, one or more United States War Savings Certificate Stamps, Series of 1918, shall be affixed thereto. Each of such War Savings Certificates will have spaces for 20 War Savings Certificate Stamps, Series of 1918, and each of such stamps thereto affixed will have a maturity value of \$5 on January 1, 1923, which will accordingly give each such certificate, when bearing its full complement of such stamps, a maturity value of \$100 on said date. No War Savings Certificates shall be issued unless at the same time one or more War Savings Certificate Stamps shall be purchased and affixed thereto, but no additional charge will be made for the War Savings Certificate itself. The name of the owner of each War Savings Certificate must be written upon such certificate at the time of the issue thereof."

"War Savings Certificates may be registered without cost to the owners at any postoffice of the first, second, or third class, subject to such regulations as the Postmaster General may from time to time prescribe, and payment in respect to any certificate so registered will be made only at the postoffice where registered. Unless registered, the United States will not be liable if payment in respect of any certificate or certificates be made to a person not the rightful owner thereof."

and the following contained in Treasury Department Circular No. 108:

"A War Savings Certificate which has been lost or destroyed will not be paid nor will a duplicate thereof be issued, unless the certificate has been registered in accordance with the regu-

lations and instructions issued by the Postmaster General. In the event of the loss or destruction of a registered certificate, the registrant may apply to the postoffice where the certificate was registered, on forms prescribed by the Postmaster General, either for the issuance of a duplicate certificate or for the payment thereof. On being satisfied of the facts as to the loss or destruction, the Secretary of the Treasury will, after not less than three months have elapsed from the time of application, authorize payment, or the issuance to the registered owner of a duplicate certificate, to be so marked, on which shall be noted the number of registered stamps affixed to the original certificate, with the proper notation of registration. Such certificate shall receive a new registration number. The Secretary of the Treasury may, in special cases, where he deems the facts warrant such action, require the claimant to give a bond of indemnity with approved thereafter on the old certificate. The duplicate certificate when issued shall stand in the place and stead of the original lost or destroyed certificate for all purposes. After the issuance of a duplicate certificate, the original shall cease to have validity for any purpose, and if recovered shall be returned to the postoffice of registration for cancellation. No duplicate certificate will be issued after the maturity of the original."

Pursuant to the regulations of the Secretary of the Treasury, the Postmaster General made certain regulations for the registration of certificates and stamps, among which is the following appearing in

Postoffice Department circular No. 3348:

"The number of the postoffice and the registrant's number shall be written or stamped across the face of each war saving certificate stamp registered."

The scheme outlined in the indictment is a scheme to alter and deal in altered obligations of the United States, as every stamp removed from a certificate decreased the value of the certificate and altered the obligation. So is the removal of the registration and identification numbers from the stamps themselves an alteration of an obligation. The Act of September 24, 1917, refers to the certificates and the regulations of the Secretary of the Treasury specifically say that the certificate is an obligation only when one or more stamps are attached, both the Act and the regulations provide for stamps as evidences of payment on the certificates and as such evidences of payment they are representatives of value and come within section 147 of the Penal Code.

"Sec. 147. The words 'obligation or other security of the United States' shall be held to mean all bonds, certificates of indebtedness, national bank currency, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, which have been or may be issued under any Act of Congress."

Whenever a stamp is registered pursuant to these regulations the government is obligated to pay the owner of that stamp its value, even though the stamp be lost or destroyed. When it is registered, the stamp itself represents an obligation of the government to the registered holder. That particular obligation is identified by means of "the postoffice number and the registrant's number . . . written or stamped across the face . . ." A removal of the stamp from its certificate and a removal of the registration and identification number from the stamp and the attaching of the stamp to a blank certificate, results in the government paying twice for the same obligation. The presenting of a stamp so removed and altered and attached to another certificate causes the government to recognize an obligation that it would not recognize with the original registration and identification number left on the stamp. The scheme as alleged in the indictment, is not only a scheme to alter obligations of the United States but is also a scheme to defraud the United States.

III.

That the testimony of W. R. Bryon, a government officer, and P. A. Young, foreman of the Grand Jury, concerning admissions of the defendant, is not admissible because another government officer had previously promised the defendant immunity from prosecution, covered by defendant's assignments

numbered III, IV, V, VI, VII, VIII, IX, XI, XII, XVII, XXII and XVIII.

The testimony of Bryon was admitted and then stricken out and the jury instructed to disregard it (Trans. pp. 166-167), and the only alleged error that need be considered in that connection is assignment numbered XII "That . . . the trial court erred in failing to grant a mistrial on the ground of the highly prejudicial testimony of Bryon before the trial jury." It will be noted that the testimony of Bryon concerning what the defendant said to him concerning the defendant's connection with the crime (Trans. pp. 79-107) is the same as the testimony of the witness Young, concerning what the defendant said in the grand jury room (Trans. pp. 107-118). If the testimony of Young is admissible, the same facts remain before the jury and the defendant could not have been prejudiced by Bryon's testimony.

There is but one question to determine in passing upon the admissibility of a confession, and that is whether or not the confession was voluntary and not induced by promises or threats of any kind.

"In approaching the adjudicated cases for the purpose of endeavoring to deduce from them what quantum of proof, in a case presented, is adequate to create, by the operation of hope or fear, an involuntary condition of mind, the difficulty encountered is that the decided cases necessarily rest upon the state of facts which existed in the particular case, and, therefore, furnish no certain criterion,

since the conclusion that a given state of fact was adequate to have produced an involuntary confession does not establish that the same result has been created by a different although somewhat similar condition of fact. . . .

"The rule is not that in order to render a statement admissible the proof must be adequate to establish that the particular communications contained in a statement were voluntarily made, but it must be sufficient to establish that the making of the statement was voluntary; that is to say, that from the causes, which the law treats as legally sufficient to engender in the mind of the accused hope or fear in respect to the crime charged, the accused was not involuntarily impelled to make a statement, when but for the improper influences he would have remained silent."

Bram vs. United States, 168 U. S. 532.

Whether or not improper influences were used in bringing about the confession is a question for the trial judge to determine from all the surrounding circumstances.

"The admissibility of such evidence so largely depends upon the circumstances connected with the confession, that it is difficult, if not impossible, to formulate a rule that will comprehend all cases. As the question is necessarily addressed in the first instance, to the judge, and since his discretion must be controlled by all the attendant circumstances, the courts have wisely forborne to mark with absolute precision the limits of admission and exclusion."

Hopt vs. Utah, 110 U. S. 574.

The defendant came before the grand jury of his own accord and was warned that whatever he might say would be used against him (Trans. pp. 107-108). He had been previously informed by the attorney in charge of the investigation that he was not required to reveal anything (Trans. p. 97). Yet counsel asks the court to say, as a matter of law, that at the time the defendant appeared before the grand jury he was acting under inducement; that his statements were not voluntarily made, but were made in reliance upon a promise of immunity given by an officer some time previous. Is there any reason to believe that he placed more reliance on the officer promising him immunity than he did on the foreman of the grand jury or the attorney in charge of the prosecution who had told him before that he was not required to tell anything and that he was not promised anything? (Trans. p. 97). There is no statement from the defendant to that effect and there is nothing in the record to indicate that the defendant was acting under the influence of the promise of immunity. The record shows that the defendant was suspicious of the promise of immunity; that he said that he had been "double-crossed before, and he was a little bit afraid." (Trans. p. 132); that he was in the office of the officer who made him the promise of immunity when that officer was told by the prosecuting officer that "I will have to throw that friend of yours, Rossi, in the can." (Trans. p. 137); that this all took place before the grand jury met (Trans. p. 138), and that

this officer knew that his promise of immunity was not to be kept. (Trans. p. 138.) The officer who made the promise was a witness for the defense (Trans. p. 128) and there is nothing in his testimony to show that he did not tell the defendant that his promise of immunity would afford no protection. The defendant himself was present at the trial and could have told why he went before the grand jury, but there is nothing except counsel's assertion that the testimony before the grand jury was induced by the promise of immunity. The events that transpired prior to the meeting of the grand jury were sufficient to put a man who was having his first experience in criminal procedure on his guard and certainly could not mislead one who had been "double-crossed before."

IV.

That the defendant did not have a fair trial by reason of certain newspaper articles which were prejudicial (Trans. pp. 148-149).

It does not appear that any of these articles were ever read by the jury nor does it appear that the defendant made any objection to them prior to the verdict. It does appear, however, that a certain article which does not seem to be included in defendant's exhibits was called to the court's attention by counsel for another defendant and that the court instructed the jury at that time to disregard it. (Trans. p. 140.) It further appears that at the close of the case

the court instructed the jury in no uncertain terms to disregard all such articles. Exhibits "A" and "B" appear to have been published prior to the trial and Exhibit "H" appears to have been published after the case went to the jury. It does not appear that counsel examined the jurors on the articles published prior to the trial or whether or not they had read them or would be influenced by them.

All of these articles were submitted to the trial court in a motion for a new trial. (Trans. p. 42.) The trial court had the opportunity to consider them in the light of all the surrounding circumstances and discretion of the trial court in denying a motion for a new trial based on such grounds will not be reviewed in the absence of conclusive ground that he was wrong. (*Holt vs. United States*, 218 U. S. 245).

V.

That the court erred in admitting the testimony of Miss Daisy Buckner, postmistress at Scio, Oregon, assignment number II.

Miss Buckner testified that certain persons applied to the Scio, Oregon, postoffice for replacement of stamps lost on March 3, 1920; that the registration number of the Scio office was 50819; and that stamps were registered by stamping the numbers across the face with a rubber stamp, giving the size of the stamp and indicating where placed on the stamp. (Trans. pp. 71-79.)

It will be noted that the names of persons apply-

ing to the Scio office for replacement of stamps is the same as the names of persons alleged in the indictment as being the owners of stamps stolen by defendant; that the number placed on their stamps is the same number the indictment alleges was removed. The testimony of this witness does not in any particular vary from the allegations in the indictment. The objection was based on the ground that there is no allegation that the stamps were registered, but the indictment alleges that a registration number was removed and an additional allegation that such a number was on the stamps before it was removed would add nothing to the information of defendants concerning the crime with which they were charged.

VI.

That the court erred in charging the jury in effect that the possession of recently stolen property affords a strong inference that the property was stolen by the person having it in his possession, Assignment XVIII.

This instruction correctly states the law.

"Possession of the fruits of crime recently after its commission, justifies the inference that the possession is guilty possession, and, though only prima facie evidence of guilt, may be of controlling weight unless explained by the circumstances or accounted in some way consistent with innocence."

Wilson vs. United States, 162 U. S. 613.

That no issue has been joined herein in that the defendant has never pleaded to this indictment; and that because of which said errors in the record herein, no lawful judgment can be rendered by the court upon the record in this case, Assignment XXXII.

This objection is answered by the case of *Garland vs. State of Washington*, 232 U. S. 642:

"The Supreme Court of Washington, following its former decisions, held that the failure to enter a plea had deprived the accused of no substantial right, and that having failed to make objection upon that ground before trial it was waived and could not be subsequently taken. . . . It is insisted, however, that this court in the case of *Crain vs. United States*, 162 U. S. 625, held the contrary. In that case the question was specifically made as to the necessity of a plea before trial, duly entered of record. The learned Justice who spoke for the majority of the court announced its conclusion approving a number of early cases in the state courts which had held that such form of arraignment entered of record was essential to a legal trial and holding that in a Federal court no valid trial could be had without the requisite arraignment and plea and that such must be shown by the record of conviction. If a legal trial cannot be had without a plea to the indictment duly entered of record before trial, it would follow that such omission in the present case requires a reversal of the judgment of conviction, because the prisoner has been deprived of due process of law.

"Technical objections of this character were undoubtedly given much more weight formerly

than they are now. Such rulings originated in that period of English history when the accused was entitled to few rights in the presentation of his defense, when he could not be represented by counsel, nor heard upon his own oath, and when the punishment of offenses, even of a trivial character, was of a severe and often shocking nature. Under that system the courts were disposed to require that the technical forms and methods of procedure should be fully complied with. But with improved methods of procedure and greater privileges of the accused, any reason for such strict adherence to the mere formalities of trial would seem to have passed away, and we think that the better opinion, when applied to a situation which now confronts us, was expressed in the dissenting opinion of Mr. Justice Peckham, speaking for the minority of the court in the *Crain* case, when he said (p. 649):

“‘Here the defendant could not have been injured by an inadvertance of that nature. He ought to be held to have waived that which under the circumstances would have been a wholly unimportant formality. A waiver ought to be conclusively implied where the parties had proceeded as if the defendant had been duly arraigned, and a formal plea of not guilty had been interposed, and where there was no objection made on account of its absence until, as in this case, the record was brought to this court for review. It would be inconsistent with the due administration of justice to permit a defendant under such circumstances to lie by, say nothing as to such an objection, and then for the first time urge it in this court.’

"Holding this view, notwithstanding our reluctance to overrule former decisions of this court, we now are constrained to hold that the technical enforcement of formal rights in criminal procedure sustained in the Crain case is no longer required in the prosecution of offenses under present systems of law, and so far as that case is not in accord with the views herein expressed it is necessarily overruled."

This decision is followed in the case of *Shidler vs. United States*, 257 Fed. 620.

VIII.

Assignment number XXX alleges as error a certain remark made by the trial court to a witness for the defense.

There was no objection made to this remark at the time it was made and the record fails to disclose wherein it prejudiced the defendant. It does not relate to the credibility of the witness, nor is it a comment on the evidence. The record does not disclose whether counsel considered the remark a reflection on the witness or on the defendant, but in any event, if the jury received any impression from the court's remark, it was fully covered by the instructions. (Trans. pp. 176-177.)

IX.

Defendant in assignment XXIV alleges that it was error for the court to refuse to instruct, among other things, that the removal of a serial number

from a certificate is not an alteration of an obligation of the United States.

Such an instruction is clearly erroneous. There is no allegation in the indictment or is there any evidence that a serial number was removed. Such an instruction is on matters entirely outside the issue and could only have the effect of confusing the jury. The indictment and proof is concerned wholly with the removal of registration and identification numbers from the stamps.

X.

Assignment XXVII alleges that it was error for the court to refuse to give certain instructions regarding newspaper articles published during the trial.

Such an instruction was given (Trans. pp. 148-149) and it is not error for the court to refuse to use the particular language of counsel. The instruction given is complete and covers all points in the requested instruction.

Respectfully submitted,

LESTER W. HUMPHREYS,
United States Attorney.

JOHN C. VEATCH,
Assistant United States Attorney.

No. 3712

In the United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

In the Matter of the Petition of HOSAYE SAKA-
GUCHI, for a Writ of Habeas Corpus.

TRANSCRIPT UPON APPEAL

FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT
OF WASHINGTON, NORTHERN
DIVISION.

FILED
JUL - 1911
T.D. MOWATT

No.

In the United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

In the Matter of the Petition of HOSAYE SAKA-
GUCHI, for a Writ of Habeas Corpus.

TRANSCRIPT UPON APPEAL

FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT
OF WASHINGTON, NORTHERN
DIVISION.

INDEX

Assignments of Error	13
Bond on Appeal	19
Citation	17
Clerk's Certificate	24
Decision	9
Judgment	11
Notice of Appeal	16
Order Fixing Bond	15
Order to Show Cause	5
Order Extending Time to File Record.....	22
Order to Transmit Original Exhibit.....	23
Petition for Appeal	12
Petition for Writ of Habeas Corpus.....	2
Return to Order to Show Cause	7
Stipulation for Order to Transmit Original Exhibit	23

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 5959.

In the Matter of the Petition of HOSAYE SAKAGUCHI,
For a Writ of Habeas Corpus.

HOSAYE SAKAGUCHI,
Appellant.

JAMES KIEFER,
Attorney for Appellant.

HON. ROBERT C. SAUNDERS,
United States Attorney.

MISS CHARLOTTE KOLMITZ,
Asst. United States Attorney.
Attorneys for Appellee.

Petition for writ of Habeas Corpus filed April 18,
1921.

Order to Show Cause Why Habeas Corpus should
not issue returnable April 21, 1921.

April 19, 1921, Cause continued to April 26, 1921.

April 26, 1921, Cause continued to April 27, 1921.

April 27, 1921, Cause submitted to the Court.

April 29, 1921, Opinion filed discharging order to
show cause and denying writ of habeas corpus.

May 9, 1921, Judgment entered dismissing cause.

May 10, 1921, Petition for appeal filed;

Notice of appeal filed;

Assignment of Errors filed;

Citation awarded and order fixing bond on
appeal filed.

Bond on appeal approved and filed.

*In the District Court of the United States in and
for the Western District of Washington,
Northern Division.*

No. 5959.

PETITION

In the Matter of the Petition of HOSAYE SAKAGUCHI, For a Writ of Habeas Corpus.

To the Honorable, the Judges of the Above Entitled Court:

The petition of Hosaye Sakaguchi respectfully represents:

That she is a subject of Japan; that she arrived in the United States of America on the Africa Maru on the 23rd day of December, 1919; that she had a passport issued by the proper authorities of the Government of the Empire of Japan bearing date the 10th day of the 10th month of the 8th year of Taisho, and that she is the wife of Kyunoemon Sakaguchi, who resides in the City of Seattle and has lived in the United States for about twenty-two years.

That she was, upon landing, denied admission to the United States because of being afflicted with hookworm, and upon application your petitioner was granted treatment for said disease and on January 24, 1920, a certificate was made by the United States Public Health Service, through its surgeons, that the petitioner had been cured of said disease, and thereupon your petitioner was, on February 27, 1920, by a majority of the Board of Special Inquiry, refused admission to the United States

because of trouble arising between her husband and petitioner subsequent to the landing, and upon the ground that she was likely to become a public charge, and upon the ground that her passport was not in proper form.

That thereafter your petitioner appealed from said holding and finding of the majority of said Special Board of Inquiry to the Commissioner of Labor; that said official permitted your petitioner to remain in the United States under bond against becoming a public charge, and again thereafter permitted your petitioner to remain in the United States under the recognizance of the Japanese Imperial Consul at the Port of Seattle. That the appeal of your petitioner has been finally denied, and your petitioner is to be deported on the *Africa Maru* on April 22, 1921.

That your petitioner was refused a fair and impartial trial in this: (a) That a majority of the Board of Special Inquiry and the Secretary of Labor ignored the passport of your petitioner and treated it as irregular, when in truth and in fact it is regular in all respects;

(b) In that a majority of the Board of Special Inquiry and the Secretary of Labor disposed of the case of your petitioner on the basis of and as if she were an unmarried woman, ignoring the rights of your petitioner as the wife of Kyunoemon Sakaguchi, and ignoring the liability of the husband of your petitioner for her support;

(c) In that a majority of the Board of Special Inquiry and the Secretary of Labor held that your

petitioner was liable to become a public charge notwithstanding the fact that your petitioner has a sister, Mrs. Komakachi Horikawa, who lives in the City of Seattle and whose husband keeps a hardware store and amply able to support petitioner and willing to do so, and liable so to do under the Statutes of the State of Washington;

(d) In that a majority of said Board of Special Inquiry and the Secretary of Labor held your petitioner to be a person likely to become a public charge notwithstanding the fact that petitioner is in good health and capable of supporting herself either by sewing or in domestic labor, all of which appears upon the record in the office of the Commissioner of Immigration.

That your petitioner is in the custody of Henry M. White, United States Commissioner of Immigration for the Port of Seattle, for deportation on April 22, 1921.

Wherefore, your petitioner prays that an order may be made herein, requiring said Henry M. White, Commissioner of Immigration for the Port of Seattle, to show cause why a writ of habeas corpus should not be issued herein requiring the said Henry M. White as Commissioner of Immigration as aforesaid to produce your petitioner before this Court, and why your petitioner should not be discharged and your petitioner allowed to remain in the United States.

HOSAYE SAKAGUCHI,

JAMES KIEFER,

Petitioner.

Attorney for Petitioner, 327 Colman Bldg.,
Seattle, Washington.

United States of America,
Western District of Washington,
County of King.—ss.

Hosaye Sakaguchi, the petitioner, being duly sworn on oath, says: That she has heard the foregoing petition read, knows the contents thereof, and the facts therein stated are true.

HOSAYE SAKAGUCHI,

Subscribed and sworn to before me this 18th day of April, 1921.

JAMES KIEFER,

Notary Public in and for the State
of Washington, residing at Seattle.

(N. P. Seal)

Filed in the United States District Court, Western District of Washington, Northern Division, April 18, 1921.

F. M. HARSHBERGER, Clerk,
By S. E. LEITCH, Deputy.

*In the District Court of the United States in and
for the Western District of Washington,
Northern Division.*

No. 5959.

ORDER

In the Matter of the Petition of HOSAYE SAKAGUCHI, For a Writ of Habeas Corpus.

In this cause the petition of Hosaye Sakaguchi having been presented to the Court,

It is by the Court ordered that Henry M. White,

as United States Commissioner of Immigration at the Port of Seattle, in this District, do show cause before this Court, on the 21st day of April, 1921, at the hour of ten o'clock A. M., why a writ of habeas corpus should not issue herein, commanding him, the said Henry M. White, as Commissioner aforesaid, to produce the body of said petitioner before this Court; and

It appearing to the Court that the said petitioner has been at large in the United States under the control of the Imperial Japanese Consul at Seattle, upon the recognizance of said Consul for her appearance when required for deportation,

It is by the Court further ordered, that the said recognizance be continued, and that pending the hearing of this order the said petitioner do remain in the custody of said Imperial Japanese Consul under said recognizance.

Done in open Court, April 18th, 1921.

EDWARD E. CUSHMAN, Judge.

Filed in the United States District Court, Western District of Washington, Northern Division, April 18, 1921.

F. M. HARSHBERGER, Clerk,
By S. E. LEITCH, Deputy.

*United States District Court, Western District of
Washington, Northern Division.*

In the Matter of the Application of HOSAYE
SAKAGUCHI, for a writ of Habeas Corpus.

No. 5959.

RETURN

To the Honorable Edward E. Cushman, Judge of
the District Court of the United States for the
Western District of Washington:

Now comes the respondent, Henry M. White,
United States Commissioner of Immigration for
the District of Washington, appearing by F. S.
McCullough, duly authorized Immigrant Inspector,
and produces the body of Hosaye Sakaguchi in
obedience to the command and direction of the writ
of habeas corpus in the above entitled matter, being
the person named in the petition for said writ.

For answer and return to said writ, respondent
averts that he detained in his custody the body of
Hosaye Sakaguchi for deportation from the United
States as an alien Japanese person not entitled to
remain in the United States under and by virtue
of an order of the Secretary of Labor issued to him
the said respondent.

Respondent attaches hereto the records, decisions
and exhibits, both on the hearing before him as
Commissioner of Immigration and the hearing in
appeal to the Secretary of Labor, which constitute
a part of this return.

And now the respondent having fully answered, he prays that said writ may be discharged.

F. S. McCULLOUGH.

United States of America,
Northern Division of
Western District of Washington.—ss.

F. S. McCullough, being first duly sworn, on his oath deposes and says: That he is Inspector of Immigration named in the foregoing return; that he has read the said return and knows the contents thereof and that he believes the same to be true.

F. S. McCULLOUGH.

Subscribed and sworn to before me this 26th day of April, 1921.

FRANK. L. CROSBY, Jr.

Deputy Clerk U. S. District Court for
the Western District of Washington.

Filed in the United States District Court, Western District of Washington, Northern Division, April 26, 1921.

F. M. HARSHBERGER, Clerk,
By S. E. LEITCH, Deputy.

*In the District Court of the United States, Western
District of Washington, Northern Division.*

No. 5959.

MEMORANDUM DECISION

Filed: April 29, 1921.

In the Matter of the Application of HOSAYE
SAKAGUCHI, for a writ of Habeas Corpus.
JAMES KIEFFER, ESQ.,
For Petitioner.

HON. ROBERT. C. SAUNDERS,
U. S. Attorney,

MISS CHARLOTTE KOLMITZ,
Asst. U. S. Attorney,
For Respondent.

Cushman, District Judge.

I conclude that the board of special inquiry was legally constituted. On account of the conclusion reached, I do not deem it necessary to determine whether the board and Commissioner were right in holding the passport irregular.

I conclude that the finding of the board, approved by the Commissioner, that the petitioner was liable to become a public charge, is not so wholly devoid of supporting evidence as to warrant this court in granting discharge on habeas corpus.

It may be true that the sister of petitioner and the sister's husband, residing in the State of Washington, are able to provide for the petitioner and it may also be true that the petitioner is capable,

as a seamstress, or otherwise, to care for herself; but it is obvious that a new arrival in the country—a young woman—ignorant of its language and customs, without special protection, though skilled, may become a public charge by reason of her ignorance of the country and the willingness and ability of the sister and her husband to care for the applicant do not take the place of the husband.

The husband might be presumed to accompany and remain with the wife and it may be presumed that the husband is liable for the maintenance of the wife throughout the entire country; but neither presumption attaches in the case of the sister. Her husband being established in Seattle, she will be presumed to remain with him, but there is no presumption that the petitioner will remain in this state. If she leaves the state, the sister's liability for her support, under the state statute, if such exists, would not apply.

Whether the board and Commissioner would be warranted in concluding that a young Japanese woman, ignorant of the country, unprotected by her husband, is liable to become a public charge, because of the irregular life into which she might be forced through mischance, it is not necessary to decide; but that would be one of the contingencies that the board might consider along with the other circumstances of the case in reaching the conclusion it did.

The discharge upon the petition is denied.

Filed in the United States District Court, West-

ern District of Washington, Northern Division,
April 29, 1921.

F. M. HARSHBERGER, Clerk,
By S. E. LEITCH, Deputy.

*In the District Court of the United States in and
for the Western District of Washington,
Northern Division.*

No. 5959.

JUDGMENT DISMISSING PETITION

In the Matter of the Petition of HOSAYE SAKA-
GUCHI, For a Writ of Habeas Corpus.

In this cause, the petition for writ of habeas corpus having been heretofore filed herein and an order having been granted requiring Henry M. White, Commissioner of Immigration for the Port of Seattle, to show cause why a writ of habeas corpus should not be issued herein, and why the petitioner should not be discharged and allowed to remain in the United States having been granted and a return having been made by said Commissioner of Immigration, and the matter having come on regularly to be heard upon said return, the Court heard the argument of counsel and having duly considered the same, did heretofore on the 29th day of April, 1921, file its written opinion herein discharging said order to show cause, and denying the petition for a writ of habeas corpus.

It is therefore here and now ordered, adjudged and decreed, and the court does hereby order, adjudge and decree, that the said petition be dismissed

and said writ of habeas corpus be denied and refused, and that the petitioner, Hosaye Sakaguchi, be and she is hereby remanded to the custody of said Henry M. White, as U. S. Commissioner of Immigration for the Port of Seattle, for the execution of the judgment and order of deportation.

To the foregoing decree the said petitioner, Hosaye Sakaguchi, excepts and her exception is allowed.

Done in open Court this 7th day of May, 1921.

EDWARD E. CUSHMAN, Judge.

Filed in the United States District Court, Western District of Washington, Northern Division, May 9, 1921.

F. M. HARSHBERGER, Clerk,
By S. E. LEITCH, Deputy.

*In the District Court of the United States in and
for the Western District of Washington,
Northern Division.*

No. 5959.

PETITION FOR APPEAL

In the Matter of the Petition of HOSAYE SAKAGUCHI, For a Writ of Habeas Corpus.

Hosaye Sakaguchi, the petitioner above named, deeming herself aggrieved by the order and judgment entered on the 9th day of May, 1921, in the above entitled proceedings, does hereby appeal from the said order to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that a transcript and record of proceedings and papers

upon which said order is made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial District of the United States.

JAMES KIEFFER,
Attorney for Petitioner.

Filed in the United States District Court, Western District of Washington, Northern Division, May 10, 1921.

F. M. HARSHBERGER, Clerk,
By S. E. LEITCH, Deputy.

*In the District Court of the United States in and
for the Western District of Washington.
Northern Division.*

No. 5959.

ASSIGNMENTS OF ERROR

In the Matter of the Petition of HOSAYE SAKAGUCHI, For a Writ of Habeas Corpus.

Comes now the petitioner, Hosaye Sakaguchi, and assigns error in the decision of the said District Court as follows:

I.

The said Court erred in holding and adjudging that the Board of Special Inquiry which passed upon the right of said petitioner to enter the United States was legally constituted.

II.

The Court erred in holding and deciding that petitioner, Hosaye Sakaguchi, had a fair and im-

partial trial before the Board of Special Inquiry and before the Secretary of Labor.

III.

The Court erred in holding and deciding that the petition for writ of habeas corpus herein be dismissed, and the writ of habeas corpus be denied and refused.

IV.

The Court erred in holding and deciding and adjudging that the petitioner, Hosaye Sakaguchi, be remanded to the custody of Henry M. White, as United States Commissioner of Immigration for the Port of Seattle, for execution of the order of sentence of deportation.

V.

The Court erred in deciding, holding and adjudging that the Board of Special Inquiry was justified in finding and holding that petitioner, Hosaye Sakaguchi, was likely to become a public charge.

JAMES KIEFER,

Attorney for Hosaye Sakaguchi,
Petitioner and Appellant.

May 10, 1921.

Filed in the United States District Court, Western District of Washington, Northern Division, May 10, 1921.

F. M. HARSHBERGER, Clerk,
By S. E. LEITCH, Deputy.

*In the District Court of the United States in and
for the Western District of Washington,
Northern Division.*

No. 5959.

ORDER FIXING BOND

In the Matter of the Petition of HOSAYE SAKAGUCHI, For a Writ of Habeas Corpus.

Now, to-wit, on the 10th day of May, 1921, it is ordered that the appeal be allowed as prayed for, and

It is further ordered that said petitioner, Hosaye Sakaguchi, may at any time pending said appeal be at large, upon executing a recognizance or bond to the United States, and sureties in the sum of one thousand (\$1000.00) dollars, to the satisfaction of the Clerk of this Court for her appearance to answer the judgment of the Circuit Court of Appeals, or the judgment of the District Court if the same be affirmed.

EDWARD E. CUSHMAN,
District Judge.

Filed in the United States District Court, Western District of Washington, Northern Division, May 10, 1921.

F. M. HARSHBERGER, Clerk,
By S. E. LEITCH, Deputy.

*In the District Court of the United States in and
for the Western District of Washington,
Northern Division.*

No. 5959.

NOTICE OF APPEAL

In the Matter of the Petition of HOSAYE SAKAGUCHI, For a Writ of Habeas Corpus.

To Henry M. White, United States Commissioner of Immigration at the Port of Seattle, Washington, and the United States of America, and to Robert C. Saunders, United States District Attorney for the Western District of Washington:

You, and each of you, are hereby notified that Hosaye Sakaguchi, petitioner above named, hereby now appeals from that certain order, judgment and decree made herein by the above entitled Court on the 9th day of May, 1921, adjudging, holding, finding and decreeing that the petition of the petitioner for writ of habeas corpus be dismissed, and that the petitioner be denied and refused a writ of habeas corpus, and adjudging that petitioner had a fair and impartial trial before the Board of Special Inquiry, and that the petitioner be remanded to the custody of Henry M. White, United States Commissioner of Immigration for the Port of Seattle, Washington, for the carrying out of the sentence of deportation, and from the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit.

JAMES KIEFER,

Attorney for Hosaye Sakaguchi,
May 10, 1921. Petitioner and Appellant.

Received copy of foregoing Notice of Appeal, and

due service thereof is hereby admitted, this 10th day of May, 1921.

ROBERT C. SAUNDERS,
United States District Attorney for the
Western District of Washington, and
Attorney for Henry M. White, United
States Commissioner of Immigration
for the Port of Seattle, Washington.

By F. C. REAGAN,
Asst. United States Attorney.

Filed in the United States District Court, Western District of Washington, Northern Division, May 10, 1921.

F. M. HARSHBERGER, Clerk,
By S. E. LEITCH, Deputy.

*In the District Court of the United States in and
for the Western District of Washington,
Northern Division.*

No. 5959.

CITATION

In the Matter of the Petition of HOSAYE SAKAGUCHI, For a Writ of Habeas Corpus.

United States of America.—ss.

To Henry M. White, United States Commissioner of Immigration at the Port of Seattle, Washington, and to the United States of America, Greeting:

Whereas, Hosaye Sakaguchi has lately appealed to the United States Circuit Court of Appeals in

the Ninth Circuit from a judgment, order and decree lately rendered in the District Court of the United States for the Western District of Washington, made in favor of you, adjudging and decreeing that the petition of said Hosaye Sakaguchi for a writ of habeas corpus be dismissed and the writ of habeas corpus be denied and refused, and has filed the security required by law;

You are therefore hereby cited to appear before the said United States Circuit Court of Appeals, in the City of San Francisco, State of California, the 8th day of June next, to do and receive what may obtain to justice to be done in the premises.

Given under my hand at the City of Seattle, in the Ninth Circuit, this 10th day of May, in the Year of Our Lord One Thousand Nine Hundred and Twenty-one, and of the Independence of the United States the One Hundred Forty-fifth.

EDWARD E. CUSHMAN,

Judge of the United States District Court
for the Western District of Washington.

Received copy of foregoing Citation, and due service thereof is hereby admitted, this 10th day of May, 1921.

ROBERT C. SAUNDERS,

United States District Attorney for the
Western District of Washington, and
Attorney for Henry M. White, United
States Commissioner of Immigration
for the Port of Seattle, Washington.

By F. C. REAGAN,

Assistant United States Attorney.

Filed in the United States District Court, West-

ern District of Washington, Northern Division, May 10, 1921.

F. M. HARSHBERGER, Clerk,
By S. E. LEITCH, Deputy.

*In the District Court of the United States in and
for the Western District of Washington,
Northern Division.*

No. 5959.

APPEAL BOND

In the Matter of the Petition of HOSAYE SAKAGUCHI, For a Writ of Habeas Corpus.

Know All Men By These Presents: That we, Hosaye Sakaguchi, as principal, and Alfred T. White and Blanche R. White, his wife, of Seattle, Washington, as sureties, are held and firmly bound unto the United States of America in the full and just sum of one thousand (\$1000.00) dollars, to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 10th day of May, in the Year of our Lord One Thousand Nine Hundred and Twenty-one.

Whereas, lately at a District Court of the United States for the Western District of Washington, Northern Division, in a proceeding pending in said court, to-wit, a petition by the above named principal, Hosaye Sakaguchi, for a Writ of habeas corpus directed to Henry M. White, commanding that he produce the body of said petitioner before the

said District Court together with the cause of her detention; and

Whereas, upon the hearing of the said matter a judgment and decree was made by the Court in said cause denying the said writ of habeas corpus and dismissing the proceeding; and

Whereas, the above named Hosaye Sakaguchi has appealed from said judgment and decree in said habeas corpus proceeding to the Circuit Court of Appeals for the Ninth Circuit, and said Hosaye Sakaguchi has obtained a citation directed to the said Henry M. White, citing and admonishing him to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco in said Circuit on the 8th day of June next;

Now, the condition of this obligation is such that if the said Hosaye Sakaguchi shall prosecute said appeal to effect and answer all damages and costs, if she fail to make the said plea good, and shall and do in all things comply with and perform the judgment of the said United States Circuit Court of Appeals for the Ninth Circuit, as well as the judgment of the said District Court, if the same shall be affirmed, then the obligation to be void, else to remain in full force and virtue.

Sealed and Delivered in the presence of:

R. KOVAR,

WALTER E. THUMLER.

HOSAYE SAKAGUCHI (Seal)

ALFRED T. WHITE (Seal)

BLANCHE R. WHITE (Seal)

United States of America,
Western District of Washington,
County of King.—ss.

Alfred T. White and Blanche R. White, being first duly sworn according to law, do depose and say: That they are bona fide and actual residents of the County of King and State of Washington, and property owners therein; that they are the sureties who signed the foregoing bond; that they are worth in property in the State of Washington, not exempt from levy, execution and sale, the sum of three thousand (\$3000.00) dollars over and above all their just debts and liabilities, and that neither of them is an Attorney at Law or Clerk of the above entitled Court, or any officer of the above entitled Court.

ALFRED T. WHITE,
BLANCHE R. WHITE.

Subscribed and sworn to before me this 10th day of May, 1921.

WALTER E. THUMLER,

Notary Public in and for the State of Washington, residing at Seattle.

(N. P. Seal)

The foregoing bond approved.

Dated May 10, 1921.

EDWARD E. CUSHMAN, Judge.

Filed in the United States District Court, Western District of Washington, Northern Division, May 10, 1921.

F. M. HARSHBERGER, Clerk,
By S. E. LEITCH, Deputy.

*In the District Court of the United States in and
for the Western District of Washington,
Northern Division.*

No. 5959.

ORDER

In the Matter of the Petition of HOSAYE SAKAGUCHI, For a Writ of Habeas Corpus.

In this cause, on motion of James Kiefer, attorney for petitioner and appellant,

It is by the Court ordered, that the time for filing the record in the United States Circuit Court of Appeals be, and the same is, hereby extended to and including the 5th day of July, 1921.

Done in open Court, June 6th, 1921.

EDWARD E. CUSHMAN, Judge.

O. K.

ROBERT C. SAUNDERS,
U. S. Attorney.

By CHARLOTTE KOLMITZ,
Asst. U. S. Attorney.

Filed in the United States District Court, Western District of Washington, Northern Division, June 6, 1921.

F. M. HARSHBERGER, Clerk,
By S. E. LEITCH, Deputy.

*In the District Court of the United States in and
for the Western District of Washington,
Northern Division.*

No. 5959.

ORDER

In the Matter of the Petition of HOSAYE SAKA-
GUCHI, For a Writ of Habeas Corpus.

Upon stipulation of Counsel ,it is by the Court
ordered, and the Court does hereby order, that the
original record in the United States Immigration
Office at Seattle, filed herein as a part of the re-
turn of the Commissioner of Immigration, be trans-
mitted by the Clerk to the United States Circuit
Court of Appeals as an original exhibit and that the
same need not be printed.

Done in open Court this 20th day of June, 1921.

EDWARD E. CUSHMAN, Judge.

Filed in the United States District Court, West-
ern District of Washington, Northern Division,
June 20, 1921.

F. M. HARSHBERGER, Clerk,

By S. E. LEITCH, Deputy.

*In the District Court of the United States in and
for the Western District of Washington,
Northern Division.*

No. 5959

STIPULATION

In the Matter of the Petition of HOSAYE SAKA-
GUCHI, For a Writ of Habeas Corpus.

It is stipulated, between the appellant, by her
attorney, and the respondent, by the United States

attorney, that the original record in the office of the Commissioner of Immigration at Seattle, filed herein April 27, 1921, as a part of the return of the said Commissioner of Immigration, shall be transmitted to the Appellate Court as an original exhibit and need not be printed.

Dated June 20th, 1921.

JAMES KIEFER,

Attorney for Appellant,

ROBERT C. SAUNDERS,

United States Attorney and

Attorney for Respondent.

By F. C. REAGAN,

Asst. United States Attorney.

Filed in the United States District Court, Western District of Washington, Northern Division, June 20th, 1921.

F. M. HARSHBERGER, Clerk,

By S. E. LEITCH, Deputy.

CLERK'S CERTIFICATE.

United States of America,

Western District of Washington.—ss.

I, F. M. Harshberger, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify the foregoing twenty-five printed pages, 1 to 25, inclusive, to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause, as same appears upon the record of

this cause and appeal, and as the same remain of record and on file in the office of the Clerk of said Court, and that the same constitute the record on appeal from the order, judgment and decree of the District Court of the United States for the Western District of Washington to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that I hereto attach and herewith transmit the original citation in this cause, and the original record in the office of the United States Commissioner of Immigration at Seattle, referred to and made a part of the return of said Commissioner and filed herein April 27th, 1921.

I further certify that the cost of preparing the foregoing record on appeal, and printing the same, is the sum of Forty-eight and 90/100 (\$48.90) dollars, to-wit: \$7.55 clerk's fees and \$41.35 printing, and that the said sum has been paid by James Kiefer, attorney for Appellant.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said District Court at Seattle, in said District, on this 28th day of June, 1921.

F. M. HARSHBERGER,
Clerk of the United States District Court
for the Western District of Washington.

IN THE 6
United States
Circuit Court of Appeals
FOR THE
Ninth Circuit

In the Matter of the Petition
of Hosaye Sakaguchi, for a
Writ of Habeas Corpus.

No. **3712**

Appeal from the United States District Court
for the Western District of Washington.
Northern Division.

Hon. Edward E. Cushman, Judge.

BRIEF OF APPELLANT

JAMES KIEFER

Attorney for Appellant.

327 Colman Building,
Seattle, Washington,

FILED

LOWMAN & HANFORD CO., SEATTLE

SEP - 6 1921

F. D. MONCKTON,
CLERK

IN THE
United States
Circuit Court of Appeals
FOR THE
Ninth Circuit

In the Matter of the Petition of Hosaye Sakaguchi, for a Writ of Habeas Corpus.	} No.....
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Appeal from the United States District Court
for the Western District of Washington.
Northern Division.

Hon. Edward E. Cushman, Judge.

BRIEF OF APPELLANT

STATEMENT OF THE CASE

The facts involved in this appeal are simple. The Appellant arrived at the Port of Seattle late in 1919, and was found to be afflicted with hookworm, and upon petition of her husband, was granted medical treatment, and thereafter her cure was certified by the proper medical authorities.

A further hearing was had before a Board of Special Inquiry on January 26, 1920, and the Appellant refused a landing. The case was

opened, and a final hearing had February 27, 1920, and the Appellant was again adjudged likely to become a public charge and ordered returned to Japan.

Appeal was taken to the Secretary of Labor, and after a considerable delay the order of the Board of Special Inquiry was affirmed, and Appellant again denied admission.

A petition for a Writ of Habeas Corpus was filed, and an Order to Show Cause Why the Writ Should not be Granted served upon the Commissioner of Immigration at the Port of Seattle, and upon hearing, the rule was discharged and the writ denied. Appeal was taken to this Court, and the case comes here upon the Immigration Record filed as a part of the return to the Order to Show Cause. This record has not been printed, but sent up as an exhibit.

To avoid repetition, we omit any statement of the testimony, as it will appear in the course of argument.

The two leading questions are: Was the Board of Special Inquiry properly constituted, and if so, was there any testimony to support or justify the finding of the Board that the Appellant was likely to become a public charge.

ASSIGNMENTS OF ERROR

I.

The said Court erred in holding and adjudging that the Board of Special Inquiry which

passed upon the right of said petitioner to enter the United States was legally constituted.

II.

The Court erred in holding and deciding that petitioner, Hosaye Sakaguchi, had a fair and impartial trial before the Board of Special Inquiry and before the Secretary of Labor.

III.

The Court erred in holding and deciding that the petition for writ of habeas corpus herein be dismissed, and the writ of habeas corpus be denied and refused.

IV.

The Court erred in holding and deciding and adjudging that the petitioner, Hosaye Sakaguchi, be remanded to the custody of Henry M. White, as United States Commissioner of Immigration for the Port of Seattle, for execution of the order of sentence of deportation.

V.

The Court erred in deciding, holding and adjudging that the Board of Special Inquiry was justified in finding and holding that petitioner, Hosaye Sakaguchi, was likely to become a public charge.

ARGUMENT

WAS THE BOARD OF SPECIAL INQUIRY LEGALLY CONSTITUTED?

The Board of Special Inquiry which entered the final finding now in question, was composed of two officials of the United States, towit, two Immigration Inspectors and one stenographer or clerk.

Section 17 of the Immigration Statute of February 5, 1917, Fed. Stat. Anno. Supp. of 1918, page 228, provides:

“That Boards of Special Inquiry shall be appointed by the Commissioner of Immigration or Inspector in charge at the various ports of arrival as may be necessary for the prompt determination of all cases of immigrants detained at such ports under the provisions of the law. Each Board shall consist of three members, who shall be selected from such of the immigrant officials in the service as the Commissioner General of Immigration, with the approval of the Secretary of Labor, shall from time to time designate as qualified to serve on such Boards. When in the opinion of the Secretary of Labor the maintenance of a permanent Board of Special Inquiry for service at any sea or land border port is not warranted, regular constituted Boards may be detailed from other stations for temporary service at such port, or, if that be impracticable, the Secretary of Labor shall authorize the creation of boards of Special Inquiry by the Immigration Officials in charge at such ports, and

shall determine what Government Officials or other persons shall be eligible for service on such boards."

No showing appears in the record of the proceedings in the Immigration Office which affords any excuse for the presence on the Board of the clerk or stenographer member. No contention was made in the Trial Court that there were not sufficient officials at the Port of Seattle to make up a Board of Special Inquiry, and no showing was made that the clerk or stenographer member had been specially authorized or detailed to act upon the Board. Indeed it is the Appellant's contention that if any such designation had been made, either by the Commissioner General of Immigration, the local Commissioner or the Secretary of Labor, it would be without warrant of law, unless it should further appear that there were not sufficient qualified Immigrant Officers stationed at the Seattle Immigration Office to make up a Board. The statute which we have quoted fully bears out our contention.

Manifestly, when the section of the statute which we have printed above is carefully read, it will appear that it was in the contemplation of Congress that at the larger ports of the country the personnel of Boards of Special Inquiry should be confined to Immigrant Officials, but that at the smaller ports, where a sufficient number of such officers can not be had, they may either be detailed from other stations or persons outside official circles may be designated to serve.

No showing was made for the reason that none could be made. At the Port of Seattle Immigration Station a large number of Inspectors are employed, enough to constitute several Boards of Special Inquiry, and it was not contended that there was any necessity for the employment of the clerk member. On the contrary, the Government stood upon the ground that no such showing was necessary, and insisted upon the legal qualifications of such clerk or stenographer member. We submit that this did not constitute a legal Board.

U. S. vs. Redfern, 180 Fed. 500.

The statute uses the term "officer." A stenographer or clerk is not an officer. A cognate question arose in the case of *State vs. Mason*, 55 N. E. 167, where it was held that a pension agent's clerk is not an official of the United States so as to disqualify him for membership in the State legislature.

A clerk in the office of the Supervisor of Internal Revenue, appointed or employed under Section 3160, Revised Statutes, is not an officer of the United States and as such required to take the oath of office prescribed by Section 1756, R. S. U. S.

Hedrick vs. U. S., 16 Ct. Claims Rep., page 88-100.

U. S. vs. Schlierholz, 137 Fed. 616.

Martin vs. U. S., 168 Fed. 198.

U. S. vs. Haas, 167 Fed. 211.

If the Board was illegally constituted, as we contend it was, it was without power to hear or

determine the matter, and such situation sets the whole matter at large, and the Court will determine the status of the petitioner upon the record, both as to law and fact.

U. S. vs. Smith, 124 U. S. 525; 31 L. Ed. 534.

It will be observed from a reading of the proceedings before the Board of Special Inquiry, that the finding of irregularities in Appellant's passport, and the finding that she was likely to become a public charge, was made by a majority of the Board, composed of one properly qualified official and the other the clerk or stenographer member. If our contention is correct, this vitiates the proceedings.

DID APPELLANT HAVE A FAIR TRIAL?

The ruling of the Board of Special Inquiry upon the regularity of the passport is rather difficult to understand. The first Board of Special Inquiry, after hearing the evidence, held that Appellant had no valid passport.

The authority of the Board of Special Inquiry to sit as a Court of Error and Appeal and review the issuance of the passport is not apparent. The passport was conceded to be regular upon its face, and it is respectfully suggested that any errors or misrepresentations entering into procurement of the passport are to be corrected and adjusted by the issuing authority. The Appellant had either a genuine or a spurious passport. It is admitted to be genuine. That makes it binding upon the public authorities of this country in all respects to the

extent to which it is binding. It does not give the right to any officer, or set of officers, to correct any errors or review any misrepresentations which may have led to its issuance. The issuing authority is the one competent to deal with such questions. Clearly the action of the Board with reference to the passport was arbitrary and unusual, and so far beyond the power and duties of the Board of Special Inquiry as to show most clearly that the rights of Appellant did not receive at the hands of a majority of such Board the fair and unprejudiced consideration to which she is entitled.

IS THE APPELLANT LIKELY TO BECOME A PUBLIC CHARGE?

The testimony adduced at the several sessions of the Board of Special Inquiry, and upon which the Board acted, may be fairly summarized as follows:

The Appellant is a married woman, a subject of the Emperor of Japan, was sent for by her husband, and came to the United States with a passport regular on its face, and being found, upon medical examination, to be afflicted with hookworm, was, upon her husband's application, accorded medical treatment, and certified by the proper authorities to have been cured. When the hearing was resumed, after such cure, it was found that the husband, owing to some differences with Appellant's sister and brother-in-law, had experienced a change of heart and refused to receive Appellant. Appellant's brother-in-law, Horikawa, has a pros-

perous hardware business in the City of Seattle, paying Income Tax for the year 1918 in the sum of \$25.75, and for the year 1920 (evidently a clerical error for 1919) of \$39.19.

Mr. and Mrs. Horikawa were willing, ready and able to receive Appellant and provide for her. So far as it appears, the Appellant's husband is able bodied and capable of earning a living. There is no suggestion of bad health on the part of either the husband or the Appellant. The marriage is undisputed.

There is also evidence of the ability of Appellant to earn her own living, either in domestic work or as a seamstress. She has been temporarily landed in the country for more than a year and there is no evidence of her being in want or of being a charge or burden on anybody. The character of her brother-in-law, Mr. Horikawa, as well as his financial ability, is amply vouched for by leading business houses of Seattle.

For the convenience of the Court, we print the actual testimony taken, as an appendix to our brief.

We concede the rule to be that if there is evidence of probability of becoming a public charge, the finding of the Board of Special Inquiry affirmed by the Secretary of Labor is binding upon the Courts, provided the record shows evidence of such probability. There must, however, be evidence in some shape of circumstances indicating a fair probability that

the applying immigrant will become a charge upon the public.

The language of the statute is: "Persons likely to become a public charge."

This is synonymous with the language used in the State statute regarding removal proceedings. The expression there used is "likely to become chargeable."

This statute was given a construction by the Court of Last Resort in Maine, in the case of *Inhabitants of Cornish vs. Inhabitants of Parsonfield*, 22 Maine 433, and the Court in that case said, speaking of the statute:

"Does not apply to persons who may be likely to become chargeable at some future and yet uncertain time, but authorizes their removal only when the fact that they are likely to become chargeable would not depend upon a contingency but upon an ascertained necessity."

In *Vohs vs. Shorthill*, 130 Iowa 538, 107 N. W. 417, likely is defined as "probable or reasonably to be expected." The Standard Dictionary defines likely as "reasonable expectation."

In *ex parte Mitchell*, 256 Fed. 229, the Court holds that a mere possibility of an alien becoming at some indefinite time in the future a pauper and incapable of self-support, does not sustain a finding by the Immigration authorities of "likely to become a public charge."

It is held that the mere possibility of the alien losing means of support does not warrant such finding and subsequent deportation.

The legality of the marriage is not questioned. The relation of husband and wife exists, and the husband can not divest himself of his responsibility by his personal act of renouncing his wife. The husband is domiciled in the State of Washington, and that State has a statute upon this subject, which reads as follows:

“Section. 1. Every person who, having sufficient ability to provide for his wife’s support, or who is able to earn the means for such wife’s support, who wilfully abandons and leaves his wife in a destitute condition, or who refuses or neglects to provide such wife with necessary food, clothing, shelter, or medical attendance, unless by her misconduct he is justified in abandoning her, shall be guilty of a gross misdemeanor.

“Section 2. In any case numerated in the previous section, the Court may render one of the following orders:

“1st. Should a fine be imposed it may be directed by the Court to be paid in whole or in part to the wife, or to the guardian, or to the custodian of the child or children or to an individual appointed by the Court as trustee.

“2nd. Before trial, or after conviction, with the consent of the defendant, the Court, in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly during such time as the Court may

direct, to the wife or to the guardian, or custodian of the minor child or children, or to an individual appointed by the Court, and to release the defendant from custody or probation during such time as the Court may direct, upon his or her entering into a recognizance, with or without sureties, in such sum as the Court may direct. The condition of the recognizance to be such that if the defendant shall make his or her appearance in Court whenever ordered to do so, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise to remain in full force and effect."

"3rd. Where conviction had and sentence to imprisonment in the county jail is imposed, the Court may direct that the person so convicted shall be compelled to work upon the public roads or highways, or any other public work, in the county where such conviction is had, during the time of such sentence. And it shall be the duty of the board of county commissioners of the county where such conviction and sentence is had, and where such work is performed by persons under sentence to the county jail, to allow and order the payment, out of the current fund, to the wife, or to the guardian, or the custodian of the child or children, or to an individual appointed by the court as trustee, at the end of each calendar month, for the support of such wife, child, or children, ward or wards, a sum not to exceed one and fifty one-hundredths dollars for each day's work of such person."—Washington Session Laws of 1913, page 71.

The sister of Appellant is liable for Appel-

lant's support. See Sec. 8375, Rem. & Bal. Code, which reads as follows:

“Relatives to Support Poor, When: Every poor person who shall be unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy, or other cause shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers, or sisters of such poor person, if they or either of them be of sufficient ability; and every person who shall fail or refuse to support his or her father, grandfather, mother, grandmother, child, grandchild, sister, or brother, when directed by the Board of Commissioners of the County where such poor person shall be found, whether such relative reside in the county or not, shall forfeit and pay to the county, for the use of the poor of their county, the sum of thirty dollars per month, to be recovered in the name of the County Commissioners for the use of the poor as aforesaid, before any justice of the peace or any court having jurisdiction; Provided, that when any person becomes a pauper from intemperance or other bad conduct, he shall not be entitled to any support from any relation except parent and child.”

We submit that a reading of the record of the proceedings in the Immigration office can not fail to convince this Court that the Board of Special Inquiry acted arbitrarily and gave no consideration whatever to the evidence, and that the evidence does not, in the slightest particular, substantiate or support or justify the finding that the Appellant is likely to become a public charge.

While it is true that the Courts do not sit as triers of fact, they do scan the record to determine whether or not there is any evidence to support to Board's findings.

Gegiow vs. Uhl, 239 U. S. 3; 60 L. Ed. 114.

Pazos vs. Redfern, 180 Fed. 500.

U. S. vs. Martin, 193 Fed. 795. ~~338~~

Spraung vs. Martin, 182 Fed. ~~220~~.

U. S. vs. Nakashima, 160 Fed. 842.

U. S. vs. Suekichi, 199 Fed. 751.

Katz vs. Commissioner of Immigration, 245 Fed. 316.

It is respectfully contended:

(a) That the Board of Special Inquiry was not legally constituted as we have shown above.

(b) That the Board of Special Inquiry was without jurisdiction to determine the regularity of Appellant's passport.

(c) That the finding of a majority of the Board of Special Inquiry, to the effect that Appellant is likely to become a public charge, is utterly without support in the evidence, but that the evidence is all the other way, and establishes the ability of Appellant to support herself as well as the legal liability of her husband and her sister to support her, and that the judgment and order of the Trial Court should be reversed, with directions to grant the Writ of Habeas Corpus and discharge the Appellant.

Respectfully submitted,

JAMES KIEFER,

Attorney for Appellant.

APPENDIX TESTIMONY

Case No. 37235/4-8.

In re case of SAKAGUCHI, Hosaye, f., 24.

Ex SS AFRICA MARU, 12-23-19.

U. S. DEPARTMENT OF LABOR Immigration Service

Seattle, Wash., January 26, 1920.

At a meeting of the Board of Special Inquiry,
convened pursuant to the instructions of the
Commissioner, composed of

Inspectors:

B. A. Hunter, Chairman,
T. L. Wyckoff.

Stenographer and Member:

Wilbur F. Patterson.

Interpreter:

K. Okajima.

(C. Fujii, being sworn, testified as follows:)

(Chairman) Q. What is your name?

(Witness) A. C. Fujii.

Q. What is your occupation?

A. Hotel proprietor.

Q. Are you familiar with the case of Sakaguchi, Hosaye, applicant for admission to the United States?

A. Yes.

Q. What testimony do you wish to offer?

A. Well, Mr. Sakaguchi called me up Saturday morning. He asked me; "Mr. Fujii, my wife in Detention House. She got released today hookworm. She cannot get out of Detention House before I go to get her;" and I tell him, "Mr. Sakaguchi, what is the reason?" "My brother-in-law, he tried to get her out Detention House this morning. He didn't ask me any, so if she cannot get out house for my brother-in-law I like. I got to meet her." Another thing, he asked if I will send her back to Japan and if she at house was any trouble to send her back to Japan. So I told, "What the reason was he tried to send her back to Japan." He said, "I do not think any good was brother-in-law Mr. Horikawa. I do not think he satisfied with my home for my wife." I said, "Why?" "He done me very bad now. I was working for Mr. Horikawa last year; and after she arrived in Seattle, detained for hookworm treatment, then Mr. Horikawa fired me out last December very bad. So I do not think he like any more me." So, well, I told, "I do not know anything about it. You go see Immigration officer. Mr. Okajima down there. You can explain to him." "Well, another thing, I heard she was to Vancouver once. I did not know about before but I found now she

was in some trouble when she was at Vancouver. Her husband send her back to Japan, so I am afraid the same trouble." Then I told him, "You go see Mr. Okajima, interpreter, I cannot say any more." So he said, "Telephone to Mr. Okajima, Immigration Office, on subject, 'Wait till I come up. Do not let she out in the house'." So, I called up Immigration office and talked to Mr. Okajima on phone, "Please hold Mrs. Sakaguchi until Mr. Sakaguchi gets there." That is all I can say.

(Interpreter used.)

(Kuinobuemon Sakaguchi, being sworn, testified as follows:)

Q. What is your name?

A. Sakaguchi.

Q. What is your first name?

A. Kuinobuemon.

Q. Who is this woman sitting over here (indicating applicant)?

A. My wife.

Q. Is she your proxy wife?

A. Yes.

Q. Why did you send to Japan to have her come here?

A. Well I send for her without knowing what I have found within the last few days.

Q. When were you married to her?

A. January, last year, year ago.

Q. Who arranged this marriage?

A. Mr. Horikawa Komakichi.

Q. Where does he live?

A. 417 Maynard Avenue, Seattle.

Q. Is he related to either you or your proxy wife?

A. Mr. Horikawa? He is the husband of this woman's sister.

Q. Who furnished the money for her to come here?

- A. Mr. Horikawa did.
- Q. Did you put up any of that money yourself?
- A. No, everything himself.
- Q. The other day here at the first hearing, you expressed a willingness to take her as your wife. Why have you changed your mind since then?
- A. Yes, I was willing at that time to receive her, but later on I found out she was in Vancouver, B. C., and had trouble when she was married before. I decided not to take her.
- Q. How did you find out she had been to Vancouver?
- A. Her sister said that, Mrs. Horikawa.
- Q. Is there any other reason why you should not receive her as your wife?
- A. No other reason.
- (Inspector Wyckoff) Q. What was the nature of the trouble that your wife was in at Vancouver, that you heard about?
- A. The trouble was that she ran away from her husband.
- Q. Where did she go when she ran away? What did she do?
- A. All that I heard was that Mr. and Mrs. Horikawa went to Vancouver and arranged for her to go back to Japan.
- Q. Were any of her actions improper?
- A. I heard that.
- Q. Just tell what you heard.
- A. I heard that she ran away from her husband, saying that he was too old and went with another man; therefore, I do not like to have her.
- Q. Who told you that?
- A. I heard a man that came on the same boat, a Japanese man.
- Q. What was his name?
- A. You can examine her and you know the truth.

(Applicant takes stand and is reminded that she is under oath to tell the truth. She testifies as follows:)

(Chairman) Q. You have heard the testimony of this man whom you came here to marry. What have you got to say about it?

A. Yes, I heard him, what he said, but I do not want to go back. I want to live with him and stay in the United States.

Q. Did you live in Vancouver, B. C.?

A. No, I never was there.

Q. Did you hear him state that your sister had said—that she told him—that you had been in Vancouver and had trouble with your husband there?

A. Well, my sister got hysterics, kind of crazy. You cannot depend on what she says. When she came to see me here at the Detention House, she told me Mr. Sakaguchi very unkind to her husband and acted very unkindly sometimes and borrowed money from her husband and would not return it at all. Sometimes he goes out and tells to other people many bad things about my sister and her husband, so my sister and he cannot get along. They were having some kind of trouble. But, as to my being in Vancouver, what he says is not true.

Q. Do you think that your sister actually said that?

A. I cannot say one way or the other. I do not know what to say about it. She may have said, and she may not. I do not know.

Q. What is the matter with your sister?

A. No question what is the matter with her. My sister has hysterics after giving birth to a child. She is still in bad condition. I do not know what to say about her. She isn't well at all.

(Horikawa Komakichi, being sworn, testified as follows:)

- Q. What is your name?
A. Horikawa Komakichi.
Q. What is your business?
A. I have hardware store, 417 Maynard Street.
Q. Who is this woman sitting over in the corner?
A. My sister-in-law.
Q. Describe the circumstances under which she came to this country.
A. She came as the wife of Sakaguchi.
Q. Describe the circumstances under which she came.
A. I and Mr. Inuoye Kametaro, in Japan, acted as go-between and arranged their marriage, I acting for Sakaguchi and he acting for her in Japan. So she came.
Q. Who paid her way to come here?
A. Sakaguchi paid.
Q. Sakaguchi said he did not pay anything. How about that?
A. He paid out of wages by working for me. I advanced the money for him to send it to Japan.
Q. How long did Sakaguchi work for you?
A. He worked for me three years ago for about two month. He was learning business, so I didn't pay him very much. Then August, last year, he came back to me and has been working for me since.
Q. Did you give him a letter of recommendation?
A. Yes.
Q. Is this the letter?
A. Yes, I signed it myself.
Q. Do you know whether or not this woman has ever been in Vancouver?
A. She was in Victoria.
Q. How long?
A. About seven months, I think.
Q. Was she married?

- A. Yes, she went there to join her husband.
- Q. She went back to Japan?
- A. Yes.
- Q. Why did she go back to Japan?
- A. Her former husband was not the right kind. He treated her very cruelly. Rev. Mr. Osawa found it out and protected her and placed her in a Japanese woman's home there. The result was that we thought she should go back to Japan rather than live with that man. You can ask Mr. Osawa. He will testify to the same.
- Q. Do you know what her former husband's name was?
- A. No, I have forgotten his name, but his family name is Matsumura.
- Q. Sakaguchi has now refused to receive this woman as his wife. What action do you propose now.
- A. I would like to ask you first to let her come to the United States, as I promise and guarantee that I will take care of her, being my sister-in-law, I can take care of her without any trouble.
- Q. In the beginning of this arrangement, were you acting in good faith in bringing her here as the wife of Sakaguchi?
- A. Yes.
- Q. Well what has caused this trouble now?
- A. Until a few days ago, I did not know that Sakaguchi is such an unworthy man. I thought he was all right. But a few days ago, I found that he goes around, borrows money from different friends of mine and spent it and acted very funny. I think some devil has got hold of him and that is the trouble.
- Q. Did you ever entrust him with your business?
- A. Yes, I did.

Q. Did he handle it satisfactorily while you were away?

A. Yes, he did.

Q. Where were you, and how long did he handle your business?

A. About four months, I was away, and he took care of my business. I was traveling for my business, sometimes Tacoma, other times Portland, and other places.

(Inspector Wyckoff) Q. Sakaguchi repaid you the money you advanced to send to his wife in Japan?

A. Not yet.

Q. How much does he owe you?

A. About ninety dollars.

Q. How much did you advance altogether?

A. About three hundred dollars.

Q. Has there been some personal misunderstanding arise between you and Sakaguchi within the last few days?

A. The first trouble I found out was that Sakaguchi was getting hold of money in the cash register to go out and eat a meal. My wife protested against it strongly, and Sakaguchi did not like it, and that was the first trouble I found out.

Q. When your sister-in-law left her husband in Victoria, did she live with another man?

A. No, not at all.

(Chairman) Q. Do you think there is any possibility of Sakaguchi living with this man?

A. I do not expect it at all.

(Inspector Wyckoff) Q. In fact, you do not want them to live together, do you?

A. No, I would like to have this girl live with him as far as I am concerned. I have found out that he is not the right kind of man. My intention was when he sent for her that he and his wife would take care

of the business, and I and my wife would go back to Japan and spend half a year there. That was what I intended.

(Patterson) Q. Have any of your friends made complaint about Mr. Sakaguchi, to you?

A. Yes, my friends, about four in number, they said Sakaguchi came around and asked money and, of course, they said they would let him have money, he being brother-in-law to me. They said that is the only reason they lent money.

Q. This money was not paid back to them, according to what they told you, and you do not think that he intends to pay it?

A. I do not know. What I heard was, he said to them, "Lend me money until my wife is landed and do not tell Horikawa about it."

(Applicant recalled, testified as follows:)

(Chairman) Q. We spoke to you a while ago about being in Vancouver. You said you hadn't been there. This testimony shows that you were in Victoria. Why didn't you tell about Victoria when we asked you about being in Vancouver?

A. I didn't think very much about it, but I never was in Vancouver, so I said I was not there.

(Inspector Wyckoff) Q. Are your parents living, and, if so, where?

A. My father is dead, but my mother is living. She is in Japan.

Q. Were you living with your mother before you came to the United States?

A. Yes.

(Applicant's husband, recalled, testified:)

(Inspector Wyckoff) Q. How much money did Horikawa send to Japan to be used as expense in bringing your wife to the United States?

- A. I do not know, about \$180. Mr. Horikawa sent money for this woman with the understanding that I pay it back by working for him. I cannot tell just how much it amounted to.
- Q. How much have you repaid him on that debt?
- A. I cannot tell you just how much. Anyway, I worked for him for two and no/100 dollars a day. I worked ten and twelve hours a day.
- Q. How much do you owe him?
- A. I think he said one hundred and fifty dollars.
- Q. How much have you paid back? Haven't you ever had an accounting with Mr. Horikawa to ascertain how much he sent and how much you owe him?
- A. A little over one hudred dollars, I paid back.
- Q. About how much do you still owe him?
- A. About one hundred dollars.
- (Chairman) Q. Have you any money to pay him with?
- A. No.
- Q. How much cash have you available right now?
- A. I have no cash.
- Q. Do you think there is any possibility of your making up with this woman and your living with her and supporting her?
- A. No, I want to send her back to Japan.
- Q. If the stories you heard about your wife's being a bad woman are false, would you then want to live with her?
- A. I do not want her anyway. I will not have anything to do with her.
- (Patterson) Q. What did Horikawa allow you for living expenses out of your wages

of two dollars a day, for clothing, room, board, and expense money?

A. I roomed and board at Horikawa's but he never gave me any cash from the beginning.

Q. How long did you work for Horikawa?

A. I worked for him from August 1st to December 8th, 1919, and during that time, I was sick and laid off about eleven or twelve days.

(Inspector Wyckoff) Q. Did Mr. Horikawa suggest to you that you marry his sister-in-law?

A. Yes.

Q. How long ago was that?

A. Month of May, 1918.

Q. Did he tell you at that time she had been previously married?

A. No, he did not say.

Q. Did he say anything at that time about being anxious to have his sister-in-law come to this country?

A. Yes, he said that.

(Applicant, recalled, testified:)

(Chairman) Q. When did you leave your former husband in Victoria?

A. I think in December, 1917.

Q. And when did you arrive in Japan, from Canada?

A. I arrived the third day of January, 1918, in Yokohama, Japan.

Q. Did Mr. Horikawa come to Victoria when you had trouble with your former husband and try to get you admitted to the United States?

A. He came to see me at that time but he did not tell me to come to the United States but he advised me to go back to Japan.

(Mrs. Sugie Horikawa, being sworn, testified:)

Q. What is your name?

A. Mrs. Horikawa, Sugie.

- Q. Do you know this girl sitting over in the corner?
- A. My sister.
- Q. Do you know for what purpose she came to this country?
- A. She came to join Sakaguchi, who used to work for us.
- Q. What is the trouble that he refused to accept her as his wife. What do you know about this trouble?
- A. I do not know what trouble he has with his wife but I had a quarrel with him.
- Q. What was the nature of the trouble you had with him?
- A. We had one thousand dollars from a Japanese Loan Association. Mr. Sakaguchi wanted us to lend him five hundred dollars out of it. He said he needed capital for gambling and he wanted that five hundred dollars. He said he would repay us two thousand dollars for it. That I didn't want to do, so we had a quarrel. He said, "If I had money, I would not want to stay here."
- (Inspector Wyckoff) Q. How old is your sister?
- A. Twenty-four, I am not quite certain.
- Q. Has she been married before?
- A. She was married when she was young.
- Q. Where is her first husband?
- A. I do not know where he is now.
- Q. Did he die?
- A. I do not know.
- Q. Did your sister leave him?
- A. Yes.
- Q. Why?
- A. All I know is, they could not get along.
- Q. Where was she living when she left her husband?
- A. She was at Mr. Osawa's. She was studying English under him. I think it was Victoria.

I heard that Mr. Osawa was very kind to her.

Q. When did your sister go from Canada home to Japan?

A. I do not remember but about four years ago, something like that, three or four years ago. Mr. Osawa wrote us to come to see her. I want to see her. I left there but I did not see her when she left Victoria.

(Note by Stenographer) Applicant seemed to be trying to signal witness how to testify.

(Chairman to Applicant) Q. After hearing the testimony and the statement of your husband that he will positively not have anything to do with you, what have you to say?

A. I can not go back to Japan now. If my husband refused to receive me, I would like to ask my sister to receive me.

Q. What kind of work can you do in this country?

A. I can do sewing.

(Chairman) I move the rejection of this alien as a person likely to become a public charge.

(Inspector Wyckoff) I second the motion.

(Patterson) I make it unanimous.

FINDINGS: The Board of Special Inquiry finds this alien to be a subject of Japan, of the Japanese race, about twenty-five years of age, going to join her husband (Sakaguchi Kuinobuemon), in the United States, to whom she was married by proxy. This man upon her arrival refused to receive her or support her. In fact, his testimony shows that he is unable to do so, as he is without funds or employment at the present time. The Board, therefore, finds that this woman, the applicant, is a person likely to become a public charge and vote to reject her. The Board further orders that she be returned

to the country whence she came at the expense of the steamship company bringing her here and in the same class of accommodations.

(Statement to Applicant) You have been rejected by this Board of Special Inquiry as a person likely to become a public charge and you have been ordered deported to the country whence you came at the expense of the steamship company bringing you here and in the same class of accommodation. Deportation will exclude you for one year. If you are later found unlawfully within the United States, you will be subject to arrest and deportation. You may appeal from this decision to the Secretary of Labor, Washington, D. C., if you care to do so. And you may also communicate with friends, relatives and acquaintances and employ an attorney if you wish. You may also communicate with the Japanese Consul. Do you wish to appeal?

A. I wish to appeal.

Certified true transcript:

WILBUR F. PATTERSON,

Stenographer.

MEDICAL CERTIFICATE

Case No. 37235/4-8

In re case of SAKAGUCHI, Hosaye, 24, f.,

Ex SS AFRICA MARU, 12-23-19.

U. S. DEPARTMENT OF LABOR

Immigration Service

Seattle, Wash., February 27, 1920.

At a meeting of the Board of Special Inquiry

convened pursuant to the instructions of the Commissioner, composed of

Inspectors:

Frank S. McCullough, Chairman,
B. A. Hunter.

Stenographer and Member:

Wilbur F. Patterson.

Interpreter:

Kinza Okajima.

Held for Special Inquiry by Inspector as
L. P. C.

Medical Certificate:

(See minutes of January 26, 1920, when this applicant was denied admission as a person likely to become a public charge.)

(By order of the Commissioner, the case is now reopened for the purpose of introducing further and new testimony.)

(Applicant, sworn, testified as follows:)

(Chairman) Q. What is your name?

(Applicant) A. Hosaye Sakaguchi.

Q. Are you the person that was rejected here on January 26, 1920?

A. Yes.

Q. And you at that time signified your intention of appealing your case?

A. Yes.

Q. If you are admitted to the United States, what do you expect to do?

A. I do not know what is customary among the American women as to their duties or work. I can do sewing. I want to work sewing.

Q. Whom do you expect to make your home with?

A. I first intended to live with my husband but, as you know the circumstances, so I

want to live with my sister and brother-in-law, and learn the English language—Mr. and Mrs. S. Horikawa.

Q. Is your mother living in Japan?

A. (Witness weeps.) I was told by my brother-in-law that my mother died about five or six days after I left Japan.

Q. Who is now the head of your family in Japan?

A. My elder brother Tsutajiro.

Q. Is he married?

A. Yes.

Q. How many children has he?

A. Five.

Q. What is his occupation?

A. Farmer.

Q. Is he a prosperous farmer and well fixed financially?

A. Yes, he is above the average farmer in the village.

Q. What were you doing in Japan?

A. I was studying and sewing and once in a while I worked and helped my brother in raising silk worms.

Q. Were you able to support yourself in Japan?

A. Yes, I could but it was not necessary for me to do so.

Q. Who supported you?

A. My brother.

Q. Were you at one time in Victoria, B. C.?

A. Yes.

Q. When was that?

A. Four or five years ago.

Q. How long did you live in Victoria, and were you married?

A. I went to Victoria from Japan as a picture bride to join my husband Matsumura, and lived there for about eight months.

Q. Did you live with your husband?

- A. I lived with him for six or seven months and then I went to the Japanese Women's Home and studied under the protection of Reverend Mr. Osawa.
- Q. Did you have some trouble with your husband before leaving him?
- A. Matsumura, my former husband, told me to go to a Japanese store and sell liquor, and he forced me to do his will, and I refused him.
- Q. Was he engaged in the liquor business himself?
- A. No, he was not engaged in the liquor business himself but he was in the liquor store and lived there.
- Q. Did you live at the liquor store also?
- A. Yes, for about two months.
- Q. Did you sell liquors while you were there?
- A. No, I did not. That is why the quarrel started.
- Q. Were there other Japanese women selling liquor at this place?
- A. No, there was only one man selling liquor.
- Q. Were there any prostitutes connected with this liquor store?
- A. No, it was practically a cigar and tobacco store. They sold liquor at the same place.
- Q. Were there any houses of prostitution in that vicinity?
- A. No, it was a kind of suburb of Victoria, out of the center of the city.
- Q. When you went back to Japan, were you deported by the Canadian authorities, or did you leave of your own accord?
- A. I went back of my own accord. I could have stayed.
- Q. Who paid your passage to Japan at that time?
- A. My passage was paid by my brother-in-law Horikawa and my sister, and Reverend

Mr. Osawa arranged everything for me. First, I did not know who paid it.

Q. How long has your sister Mrs. Horikawa been in the United States?

A. About five years. She came to the United States about the same time I came to Victoria.

Q. Did you ever at any time support yourself?

A. Well in a way, I supported myself. I worked as a sewing teacher for three years in Japan. I got wages for it.

Q. If you are admitted to the United States, would you expect your sister and brother-in-law to support you, or would you make an effort to support yourself?

A. I expect to support myself independently after while but for the time being I will have to ask my brother-in-law and sister to assist me.

Q. Have you graduated from any school of any nature in Japan?

A. After I got through the grammar school, I entered the school for teaching sewing and arrangement of artificial flowers, etc., and graduated from the same institution.

Q. Have you a diploma?

A. No, not with me. I have in Japan.

Q. How many years were you in this school?

A. Three or four years.

Q. Did you ever attend any other school?

A. I did not attend any other school but I studied some English under a private teacher.

Q. Can you speak any English at this time?

A. I can not speak well on account of pronunciation but I can read the second and third readers.

(K. Horikawa appears as a witness and, being sworn, testifies as follows:)

Q. What is your full name?

- A. Horikawa Komakiehi.
- Q. What is your occupation?
- A. I own a hardware store.
- Q. Are you a relative in any way to the applicant Mrs. Sakaguchi?
- A. She is a sister of my wife.
- Q. Are you acquainted with the facts in her case in regards to her application for admission?
- A. Yes.
- Q. She has come destined to her husband to whom she was married by proxy, did she?
- A. No, she did not come to the United States.
- Q. This time?
- A. This time she came here, yes.
- Q. But for some reason, her husband refused to receive her?
- A. Yes.
- Q. Do you know just why her husband refused to receive and support her?
- A. What I think is that Sakaguchi made lots of debts, and he will not dare to come into my house, and I expect his conscience hurt him. There is no other reason that I can see.
- Q. Is it your intention now to have your sister-in-law join you and make her home in your house?
- A. Yes; then I expect to have her go to school a little while.
- Q. Are you financially able and willing to receive and support her?
- A. Yes.
- Q. Have you any letters of recommendation?
- A. Yes.
(Presents exhibits numbered from three to seven, five letters of recommendation from wholesale houses and people with whom he is doing business.)
- Q. Are you acquainted with the circumstances

in regard to your sister-in-law's residence in Victoria, B. C., and her return to Japan?

A. Yes.

Q. Who paid the expense of her return trip to Japan?

A. I did. I gave \$150 dollars for her expense to go back to Japan.

Q. Why didn't you attempt to have her join you in the United States at that time?

A. Her desire was to go back to Japan at that time.

Q. Is her mother living in Japan now?

A. No, she is dead.

Q. When did she die?

A. She died five days after Hosaye left Japan.

Q. Have you any evidence to submit as to her mother's death?

A. Yes, I have two letters from her brother telling the particulars of her death?

(These letters are translated by the interpreter and are introduced into the record and marked Exhibits 1 and 2.)

Q. Why did you not bring your wife as a witness in this case?

A. She has been sick for the past three or four days. You know, she is pregnant.

Q. How many children have you.

A. One child.

Q. How old is your child?

A. The child was born April of last year, 1919.

Q. Since the death of the applicant's mother, who is the head of the family in Japan?

A. Yoshikawa Tsutajiro.

Q. What is his occupation?

A. Farmer.

Q. How many children has he?

A. Seven children.

Q. Do you know anything about his financial circumstances?

A. He is a farmer and pretty well off, and then he has a silk worm raising business too.

Q. Have you anything further to say in regard to your wife's sister in case she is admitted?

A. I just wanted to say to you for Hosaye, if she is landed, I will act as her protector and do all I can. For the time being, I will send her to school to learn English and other things, and she will not be in any trouble whatever. I guarantee for her safety.

(Mr. Horikawa presents copies of his individual income tax return showing that he paid \$25.75 income tax for the calendar year 1918, and 39.19 for the year 1920.)

(Inspector Hunter) In view of the fact that this applicant has a proper passport, evidently applied for and issued in good faith, that she has been cured of the disease which caused her first rejection, that she is now destined to a sister and brother-in-law who are shown to be in a financial position to properly care for her, I believe that her present application for admission should be given consideration regardless of the fact that her husband refused to accept and care for her, that the circumstances and justice demand that her case be viewed apart from her relationship to him, and consequently move her admission.

(Member Patterson) This appears to be an unusual case in which the status of the applicant has shifted in the midst of the case.

Said applicant is a subject of Japan, a country that issues limited passports, and between which and the United States there is an agreement by which laborers of Japanese nationality, with certain exceptions, may not properly be granted passports to come to the mainland of the United States. She possesses a passport, issued by the Japanese government, bearing the

wise of the U. S. Consul at Kobe, obtained on the status of her husband, a Japanese subject residing in continental United States, she being of a class known as a "proxy bride." On arrival, she was certified for uncinariasis and was denied admission by a Board of Special Inquiry as a person likely to become a public charge. Before the case could be finally disposed of, the husband, for alleged reasons set forth in the record, positively refused to receive her. Her brother-in-law and sister now came forward with a request that the applicant be admitted to their care and protection; and the case was reopened for further consideration and introduction of additional evidence.

The applicant has but little knowledge of the English language and of American customs; and it is not probable that she could independently earn a living. And while the brother-in-law may be willing and able to support her, still she has no claim upon him which can be legally enforced.

The husband of the applicant, a Japanese subject, was enabled to send for her under the provisions of the Gentlemen's Agreement, which provides that a husband domiciled in the United States may send for his wife even though she be a laborer. It would seem, however, that in the case of a dependent, such as a wife, it necessarily follows that the wife should become and remain a part of the husband's household; and that she would not be entitled to a passport, if a laborer, provided she sought admission with the avowed intention of assuming a status independent of her husband. (But the husband will not receive her.)

She could not have obtained a passport to come to the United States based upon the status

of a brother-in-law or that of a sister domiciled in the United States.

Inasmuch as this woman prior to her departure from Japan would have been properly classified as a laborer under Rule 11, and, as it is apparent that she will continue to be a laborer within the meaning of that rule if she is landed to assume an independent status, it would seem that she is, in truth, a laborer not entitled to a passport; that the passport which she brings is of no effect; and that she is in reality a laborer without a proper passport entitling her to come to the United States.

I, therefore, move that the applicant be denied admission to the United States as a laborer without a proper passport and also as a person likely to become a public charge.

(Chairman) I second Clerk Patterson's motion to reject as a laborer without a proper passport and as a person likely to become a public charge, and I concur in the reasons given by him for rejection.

(Chairman to Alien Applicant) You have been excluded by a majority of this Board of Special Inquiry as a laborer without a proper passport entitling you to come to the United States and also as a person likely to become a public charge. You are ordered returned to the country whence you came at the expense of the steamship company bringing you here and in the same class of accommodations. You, however, have the right of appeal to the Honorable, The Secretary of Labor, Washington, D. C., which appeal will cost you nothing. Deportation will exclude you for one year. Later, if you are found unlawfully within the United States, you will be subject to arrest and deportation. You may consult your friends, rela-

tives, and consul, and employ an attorney if you wish. Do you wish to appeal?

A. Yes, I wish to appeal and my sister and my brother-in-law will attend to it for me.

Certified true transcript:

Stenographer.

TRANSLATION

December 29.

Mr. Horikawa, Komakichi:

It is getting severely cold, but hope all of you are well. We are well, so, please have ease of mind.

Mother passed away on the 12th of this month at 8:30 a. m. It occurred after Hosoye started on her journey to America, and from the fear that the sad news, if given her immediately upon her arrival there, would break her heart badly, we have withheld it from you until now. We, brothers and sisters, were with her constantly and nothing was left undone to comfort her, and at last, she passed away peacefully on the laps of brother and myself. Brother Hidekiyo got a long vacation and was able to be with her during her illness.

We had the funeral on the 13th day at 2 p. m. 61st Regiment sent us flowers, and thirty soldiers took part, while nearly all the villagers did everything they can for us.

We know Sugiye and Hosoye will feel sad because they could not see her passed away, but, they must not feel so, as we, brothers, were with her until the end.

All of you must take a good care of yourselves at this time of year.

(sgd) Yoshikawa, Tsutajiro

It is hereby certified that the foregoing is a correct and true translation of the Japanese letter, marked "AY", to the best of my knowledge and ability.

(sgd) Kinya Okiyima,
Japanese Interpreter.

Exhibit No. 1.

TRANSLATION

Brother Horikawa:

Are my sisters well? Hope all of you have welcomed the spring-time of a foreign country.

I am well and working, so, please have ease of mind.

On December 12, 8th year of Taisho, at 8:30 a.m. mother passed away, leaving behind her love, charity and longing hearts, and her remain was cremated on the 13th day at 1:30 p.m. Mother was asking how you and my sister are. She passed away on the laps of Tsutajiro and myself.

My happiness and pleasure were to visit home and see her, but all I can do now is to burn incense and read the Bible. Younger sister left mother in illness and became a heroine of the sea, and Tsutajiro is the only loved one at our home.

Brother Horikawa and Sister Horikawa, I can now do all my military duties whole-heartedly and serve our country honorably, having nothing to drag me. Hope you will accomplish your great desire and come home with gladness.

The day of Father's death, January 5.

The day of Mother's death, December 12.

The day of Bro. Shinroku's death, 21.

The day of Mother of Mitsu's death, 1.

Sister Komaye's address is: Care Mr. Matsutaro Matsuno 1-30 Kotobukicho, Yokohama.

Sister Hosoye left Yokohama on "Africa Maru" on December 7th, being five days before mother's death. Please take care of sister Hosoye and let us know as soon as she arrives there.

From the far-away home beyond the seas and lands, I am praying for the safety of you and sisters.

December 21, 8th year of Taisho (1919).

(sgn) Yoshikawa, Hidekiyo.

To Brother and Sister Horikawa.

Exhibit No. 2.

It is hereby certified that the foregoing is a true and correct translation of the Japanese letter, marked "XY."

(sgd) Kinya Okajima,

Japanese Interpreter.

Seattle, Wash., Jan. 29, 1920.

TO WHOM IT MAY CONCERN:

We are please to state that we have known Mr. K. Horikawa, who has a hardware store at 417 Maynard Avenue, for approximately a year.

In our business dealings with this gentleman we have always found him a man of his word, and, further, that he pays his obligations very promptly.

We trust this information may be of some service.

Very truly yours,

SEATTLE HARDWARE COMPANY

(sgd) C. P. King,

Credit Department.

Dictated by C. P. King.

SS.

Exhibit No. 3.

Seattle, Wash., Jan. 28, 1920.
In reply refer to S. A. R.

TO WHOM IT MAY CONCERN:

K. Horikawa, conducting a hardware business at 417 Maynard Avenue, has been a customer of ours for nearly a year, during which time he has cared for his account very promptly and satisfactorily, and we are pleased to do business with him. We consider him very energetic, reliable and a very good type of man in business and personally, and take pleasure in recommending him.

M. SELLER & CO.
(sgd) S. A. Rosenfeld, Sec'y.

NP.

Exhibit No. 4.

Seattle, Wash., Jan. 30, 1920.

TO WHOM IT MAY CONCERN:

Mr. K. Horikawa is known to us for several years, conducting a hardware store at 417 Maynard Avenue. We have never questioned his honesty, have always found him prompt in meeting his obligations.

We would not hesitate in granting him any favor he may ask.

Respectfully,
SCHWABACHER HARDWARE CO.
(sgd) Henry J. Lochow.

HJL:M

Exhibit No. 5.

TO WHOM IT MAY CONCERN:

This is to certify that I have known Kormackicki Horikawa since 1917. His business has increased since that time from a small shop, where he was doing key repairing, to where he now has a hardware store and doing a good business. Furthermore, he has a considerable income from an invention known as the "Ideal Window Lock." I have known him to take in upwardly of \$10.00 a day from this invention. I have found him conscientious and straightforward in all of my business dealings and can recommend him.

Dated this 31st day of January, 1920, at Seattle, Washington.

(sgd) RICHARD J. COOK.

Exhibit No. 6.

Jan. 31, 1920.

TO WHOM IT MAY CONCERN:

Mr. K. Horikawa, proprietor of the Horikawa Hardware Company, 417 Maynard Ave., Seattle, has had an account at this bank for the past nine years, his checking balance averaging \$500.00. This bank takes great pleasure in recommending him as a man of business ability and integrity. He bears an excellent reputation in Seattle as a man of his word, his business and private life is far above the average.

SPECIE BANK OF SEATTLE,
(sgd) M. Uyeda.

Exhibit No. 7.

In the United States Circuit Court of Appeals

For the Ninth Circuit

IN THE MATTER OF THE PETITION OF
HOSAYE SAKAGUCHI, FOR A WRIT OF
HABEAS CORPUS.

APPEAL FROM THE UNITED STATES DIS-
TRICT COURT FOR THE WESTERN DIS-
TRICT OF WASHINGTON, NORTH-
ERN DIVISION

HON. EDWARD E. CUSHMAN, *Judge*

BRIEF OF APPELLEE

ROBERT C. SAUNDERS,
United States Attorney.

CHARLOTTE KOLMITZ,
Assistant United States Attorney.

Office and Post Office Address: 310 Federal Bldg.,
Seattle, Wash.

In the United States Circuit Court of Appeals

For the Ninth Circuit

IN THE MATTER OF THE PETITION OF
HOSAYE SAKAGUCHI, FOR A WRIT OF
HABEAS CORPUS.

APPEAL FROM THE UNITED STATES DIS-
TRICT COURT FOR THE WESTERN DIS-
TRICT OF WASHINGTON, NORTH-
ERN DIVISION

HON. EDWARD E. CUSHMAN, *Judge*

BRIEF OF APPELLEE

STATEMENT OF THE CASE

In view of the fact that the statement of the case as set forth in the brief of appellant merely contains a history of the proceedings and none of the facts, we will set forth a brief summary of the case.

On the 23rd day of December, 1919, the appellant, Hosaye Sakaguchi, arrived at the port of Seattle

from Japan, and on the 26th day of December, 1919, she was given a hearing before a special board of inquiry, which board voted to exclude her on the ground that she was affected with hookworm and therefore likely to become a public charge. At the request of appellant she was permitted to take hospital treatment, and on the 24th day of January, 1920, she was certified as cured of the disease. Because of certain developments in the case, it was considered prudent to continue the case for another inquiry and on the 26th day of January, 1920, a further hearing was had before a special board of inquiry, the members of said board consisting of two immigrant inspectors and a clerk appointed to serve on said board in accordance with Section 17, Act of February 5, 1917. The said board unanimously decided that the appellant be refused a landing, on the ground that she was likely to become a public charge. Thereafter, at the request of appellant, the case was re-opened, and further testimony on behalf of the appellant presented on the 27th day of February, 1920, before a special board of inquiry constituted of two immigrant inspectors and a clerk authorized under Section 17 of the Act of February 5, 1917, which said special board again refused a landing, (not unanimous).

Appeal was taken to the Secretary of Labor, and the finding of the board was affirmed.

Petition for a writ of habeas corpus was filed (Tr. p. 3) setting forth that the petitioner was refused a fair and impartial trial, enumerating four subdivisions thereof, and in a memorandum decision (Tr. p. 9), the petition was dismissed.

The facts in the case are, briefly: Appellant is about twenty-four years of age, has been married twice "by proxy," and a subject of Japan. About four or five years ago appellant came to Victoria, B. C., as "proxy" wife of a Japanese, and lived with him as his wife in Victoria for about six months. According to her story they could not live together harmoniously and she therefore left him. Appellant's sister and brother-in-law, Horikawa, who conducts a hardware store in Seattle, assisted her to return to Japan. Appellant was again married "by proxy" to one Sakaguchi in February, 1919, Mr. Horikawa arranging the marriage and advancing the money to bring appellant to the United States to said Sakaguchi, who was employed by said Horikawa. Upon arrival at this port appellant was found to be afflicted with hookworm and was given hospital treatment. While she was in the hospital, trouble arose between said Sakaguchi, husband of

appellant, and Horikawa, brother-in-law of appellant, as a result of which the husband refused to accept his wife when she was pronounced cured, and requested that she be deported to Japan, stating that one of his reasons for this action was that appellant had been married before and had been in trouble, which facts he had ascertained after her arrival at Seattle.

There is some evidence to show that the sister and brother-in-law of appellant are desirous of caring for her. There is also some evidence that appellant is able to earn her own livelihood and has done so since her release on bond. The record in the case also discloses that at the time of the hearing of January 26, 1920, and February 27, 1920, the husband had no means and was unemployed at the time. The record also discloses that the appellant has a brother in Japan.

There are five assignments of error (Tr. p. 13). Two questions are presented for the court's consideration: The first—Was the board of special inquiry legally constituted—is covered by Assignment No. I. The second—Did the petitioner have a fair hearing—is covered by Assignments of Error Numbers II and V. Assignments of Error Numbers III and IV will not be discussed, since they necessarily

follow the holding of the court on the questions above stated.

The first question was raised for the first time, informally, during the course of argument before the District Court. Nowhere in the record attached to the return to the petition for habeas corpus is there any reference to this question made, nor does the petition (Tr. p. 2) raise the question. At the time the question was raised, the appellee stated to the court that Wilbur F. Patterson, a member of the board of special inquiry, had been appointed to serve on said board in accordance with Section 17 of the Act of February 5, 1917, and at that time offered to attach said authorization and oath of office of the said Wilbur F. Patterson to the return. At that time counsel for appellant conceded that said Patterson had been appointed and consented that the matter be submitted to the court without the record of said appointment being attached to the return. It was, however, argued at that time that said appointment was not warranted by said Section 17, Act of February 5, 1917. Judge Cushman in his memorandum decision (Tr. p. 9), on the conceded statement of fact and on the argument said, "I conclude that the board of special inquiry was legally constituted."

ARGUMENT

I.

WAS THE BOARD OF SPECIAL INQUIRY
LEGALLY CONSTITUTED?

The board of special inquiry consisted of two immigrant inspectors, F. S. McCullough and Benjamin A. Hunter, and of a stenographer and member, Wilbur F. Patterson. Section 17 of the Act of February 5, 1917, provides for the appointment of boards of special inquiry. Attention is called to the wording of said Act:

“That Boards of Special Inquiry * * *
When in the opinion of the Secretary of Labor
* * *, the Secretary of Labor shall authorize the creation of boards of Special Inquiry by the Immigration officials in charge at such ports, and shall determine what Government officials *or other persons* shall be eligible for service on such boards.” * * * Such board shall keep a complete permanent record of their proceedings and of all testimony as may be produced before them, and the decision of any two members shall prevail.”

Thus far, no court has passed on the question raised here. The case of *U. S. vs. Redfern*, 180 Fed. 500, while it is not strictly in point, was a consideration of Section 25, Act of February 20, 1907, 34 Stat.

906, and that act clearly provided for boards to be composed of immigrant officials or other government officials. Section 17 of the Act of February 5, 1917, is clear and unambiguous. It was no doubt the intentment of Congress that others than officials, if selected and approved in accordance with said Section 17, should be eligible to serve on boards of special inquiry. It has been found practical, since Section 17 of the Act of February 5, 1917, requires the presence of a stenographer at the hearing, to have the stenographer or clerk also a member of the board. The old Act of February 20, 1907, having been found insufficient in many respects, the Act of February 5, 1917, was passed to facilitate the enforcement of the immigration laws; and the insertion of the words "*or other persons*" was with a purpose.

Counsel contends at length that a clerk or stenographer is not an official. That, for the purpose of this argument, is conceded. The statute clearly contemplates the appointment of others than officials to serve on boards of special inquiry.

II.

DID APPELLANT HAVE A FAIR AND IMPARTIAL HEARING?

The inquiry of the court should be, *not*: Would this court or some other court come to a different conclusion than that of the board of special inquiry, *but*: Was there *any* evidence on which to base the conclusion?

“Where there is any evidence on which to base a warrant of deportation, the courts will not review it on habeas corpus.”

U. S. v. ex rel Diamond v. Uhl, 266 Fed. 34.

“It is not our province to weigh the testimony. We can go no further than to determine whether or not the officials to whom are entrusted the enforcement of the law have * * * abused the discretion which was * * * placed in them.”

Lim Chan vs. White, 262 Fed. 762.

To the same effect are also:

Whitfield vs. Hanges, 222 Fed. 745;

Katz vs. Commissioner of Immigration, 245 Fed. 316;

Jeung Back Hong et al. vs. White, 258 Fed. 23;

U. S. vs. Wong Lai, 270 Fed. 57.

White vs. Chan Wy Sheung, 207 Fed. 764;

Low Wah Seuy vs. Backus, 225 U. S. 46, 32 Sup. Ct. 734, 56 L. Ed. 1165;

Guiney vs. Bonham (9 C. C. A.), 261 Fed. 582, at 586.

In considering testimony, the immigration board (not necessarily being constituted of lawyers) are not held to a strict adherence to the rules of evidence required in a law court. In the case of *Guiney vs. Bonham* (9 C. C. A.) 261 Fed. 582, at 586, the court held that hearsay was admissible for a board of inquiry.

It is also evident from the record that the board took cognizance of the so-called "Gentlemen's Agreement" which prohibits the issuing of passports to one of the laboring class, and which further provides only for the issuance of passports to children to a domiciled parent, parent to domiciled child, and wife to a domiciled husband (no provision being made for the issuance of a passport to a sister to go to a sister or brother). The Circuit Court for the Ninth Circuit, in the case of *Akira Ona vs. U. S.*, 267 Fed. 359, took judicial notice of what is known as the "Gentlemen's Agreement."

The finding of the special board of inquiry on January 26, 1920, set forth in appellant's brief at page 27, the statement of member Patterson, and the conclusion of the board on February 27, 1920,

cited at page 35 of appellant's brief, clearly present the facts of this case.

The board could not consider the admission of appellant independent of her husband, even though she were able to earn her own livelihood by sewing and house-work, for to do so would be to admit a laborer, which is inherently contrary to the existing immigration statutes and treaties, nor can the sister and brother-in-law be legally held for her support.

We respectfully submit that the judgment and order of the trial court should be affirmed.

Respectfully submitted,

ROBT. C. SAUNDERS,

United States Attorney,

CHARLOTTE KOLMITZ,

Assistant United States Attorney.

United States
Circuit Court of Appeals
For the Ninth Circuit.

PACIFIC STATES ELECTRIC COMPANY, a
Corporation,

Appellant,

vs.

WILLIAM D. WRIGHT,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

FILED
AUG 11 1921
F. D. MONCKTON,
CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF
RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Affidavit of Raymond Ives Blakeslee.....	164
Answer of the Pacific States Electric Com- pany, Defendant, to the Bill of Complaint of William D. Wright, Plaintiff.....	9
Assignment of Errors.....	186
Bill of Complaint.....	3
Bond on Appeal.....	196
Certificate of Clerk U. S. District Court to Transcript of Record.....	205
Citation.....	1

DEPOSITIONS ON BEHALF OF DE-
FENDANT:

KELSEY, ARTHUR W.....	15
Cross-examination.....	24
LAMB, JOSEPH F.....	37
Cross-examination.....	51
Redirect Examination.....	61
Recross-examination.....	64
LAWLER, JAMES EDWARD.....	26
MANN, NELSON E.....	31
Evidence on Behalf of the Defendant.....	15

	Index.	Page
EXHIBITS:		
Plaintiff's Exhibit No. 1—Letters Patent No. 1,214,486 Issued to W. D. Wright for Electric Cooking Apparatus.....		207
Plaintiff's Exhibit No. 4—Letter Dated December 9, 1915—E. E. Rodabaugh to Frank C. Rapp		215
Plaintiff's Exhibit No. 7—Bill Rendered W. D. Wright by Ingle Manufacturing Co.		219
Plaintiff's Exhibit No. 9—Assignment of Interest in Letters Patent—William D. Wright to Quince C. Crane.....		220
Plaintiff's Exhibit No. 10—Assignment of Interest in Letters Patent—William D. Wright and Quince C. Crane to Crane & Wright Electric Co.		220
Plaintiff's Exhibit No. 11—Assignment of Interest in Letters Patent—Crane & Wright Electric Company to William D. Wright		225
Defendant's Exhibit No. 2—Excerpt from Simplex Catalog of 1904.....		227
Defendant's Exhibit No. 3—Excerpts from Simplex Company's Serial Number Book		230
Defendant's Exhibit No. 11—Letters Pat- ent No. 1,060,263, Issued to Joseph F. Lamb for Electrically-heated Utensil.		242
Defendant's Exhibit No. 12—Letters Pat- ent No. 1,060,264, Issued to Joseph F. Lamb for Heating Element.....		248

Index.

Page

EXHIBITS—Continued:

Defendant's Exhibit No. 13—Letters Patent No. 1,060,265, Issued to Joseph F. Lamb for Electrically-heated Device..	252
Defendant's Exhibit No. 14—Letters Patent No. 1,060,266, Issued to Joseph F. Lamb for Protective Device for Electrically-heated Utensils	257
Defendant's Exhibit No. 15—Letters Patent No. 1,060,267, Issued to Joseph F. Lamb for Electrically-heated Utensil..	261
Defendant's Exhibit No. 22—Letters Patent No. 493,422, Issued to John V. Capek for Electrically-heated Vessel..	264
Defendant's Exhibit No. 23—File-wrapper and Contents in the Matter of Letters Patent of William D. Wright, No. 1,214,486, Granted January 30, 1917 for Improvement in Electric Cooking Apparatus	271
Interlocutory Decree	178
Interrogatories Addressed to William D. Wright, Plaintiff.....	183
Memorandum Opinion	174
Minutes of Court—January 24, 1921—Order Directing That Patent be Filed etc.....	172
Minutes of Court—April 2, 1921—Order Directing Filing of Interlocutory Decree....	177
Names and Addresses of Attorneys.....	2
Order Allowing Appeal and Fixing Amount of Bond and Providing for Supersedeas....	189

	Index.	Page
Order Directing Filing of Interlocutory Decree		177
Order Directing That Patent be Filed, etc....		172
Petition for Appeal.....		184
Petition to Reopen Case, etc., and Notice Thereof		162
Praecipe for Transcript of Record.....		200
Receipt for Terms Imposed by Court Under Order of January 24, 1921.....		173
Statement, Verified, of Defendant Pursuant to Order of Court of April 2, 1921.....		193
Stipulation as to Minute Order and Appeal and Supersedeas Bond.....		194
Stipulation as to Transcript of Record on Appeal, and Exhibits		201
Stipulation for Order Staying Costs and Disbursements Judgment, Accounting and Injunction, Until Supersedeas Bond Filed Pursuant to Order Signed April 2, 1921.....		180
Stipulation Regarding Filing and Obtaining Approval of Appeal and Supersedeas Bond		182
Testimony and Proceedings on Trial.....		67
TESTIMONY ON BEHALF OF PLAINTIFF:		
CRANE, Mrs. WILLIAM A.....		103
WRIGHT, WILLIAM D.....		69
Cross-examination		100
Verified Statement of Defendant Pursuant to Order of Court of April 2, 1921.....		193

In the United States District Court, Southern
District of California, Southern Division.

IN EQUITY—No. D-68.

WILLIAM D. WRIGHT,

Plaintiff-Appellee,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant-Appellant.

Citation.

United States of America,—ss.

To William D. Wright, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, on the 6th day of June, 1921, pursuant to an order allowing an appeal entered in the clerk's office of the District Court of the United States, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, in that certain suit in Equity No. D-68, wherein you are plaintiff and appellee, and Pacific States Electric Co. is defendant and appellant, to show cause, if any there be, why order or decree of said Court made and entered April 2, 1921, against said defendant and appellant, in the said order allowing appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable OSCAR A. TRIPPET, United States District Judge for the South-

ern District of California, Ninth Judicial Circuit,
this 12th day of May, 1921.

TRIPPET,
United States District Judge for the Southern Dis-
trict of California.

Receipt of a copy of the within Citation is hereby
admitted this 12th day of May, 1921.

FREDERICK S. LYON,
LEONARD S. LYON,
Solicitors and Counsel for Plaintiff-Appellee. [1*]

[Endorsed]: In Equity — No. D-68. In the
United States District Court, Southern District of
California, Southern Division. William D. Wright,
Plaintiff-Appellee, vs. Pacific States Elec. Co., De-
fendant-Appellant. Citation. Filed May 13, 1921.
Chas. N. Williams, Clerk. R. S. Zimmerman, Dep-
uty Clerk. [2]

Names and Addresses of Attorneys.

For Appellant:

RAYMOND IVES BLAKESLEE, Esq., 727-
30 California Building, Los Angeles, Cali-
fornia;

JOHN P. BARTLETT, 120 Broadway, New
York.

For Appellee:

FREDERICK S. LYON, LEONARD S.
LYON, Stock Exchange Building, Los
Angeles, California. [4]

*Page-number appearing at foot of page of original certified Transcript
of Record.

United States District Court, Southern District of
California, Southern Division.

IN EQUITY.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC COMPANY,
Defendant.

Bill of Complaint.

COMES NOW William D. Wright, a citizen, resident and inhabitant of the city of San Diego, county of San Diego, and State of California, and files this his bill of complaint against Pacific States Electric Company, a citizen, resident and inhabitant of the city of Los Angeles, county of Los Angeles, and State of California, and complaining, alleges:

I.

That the ground upon which this Court's jurisdiction depends is that this is a suit in equity arising under the patent laws of the United States.

II.

That the defendant, Pacific States Electric Company, is a corporation organized and existing under and by virtue of the laws of the State of California, and has its principal place of business in the city of Los Angeles, State of California.

III.

That heretofore, to wit, prior to February 5, 1916,

plaintiff was the original, first and sole inventor of a new and useful invention, to wit: Electric Cooking Apparatus, not known or used by others before his invention or discovery thereof, [5] or patented or described in any printed publication in the United States of America, or any foreign country, before his invention or discovery thereof, or more than two years prior to his application for letters patent thereon in the United States of America, or in public use or on sale in the United States of America for more than two years prior to such application for letters patent therefor, and not abandoned; that heretofore, to wit, on February 5, 1916, the plaintiff made application in writing in due form of law to the Commissioner of Patents of the United States of America for letters patent for said invention and complied in all respects with the conditions and requirements of said law; that after due proceedings had and due examination made by the Commissioner of Patents as to the novelty and patentability of said invention, and after due proceedings had, on January 30, 1917, letters patent of the United States of America, No. 1,214,486, signed, sealed and executed in due form of law and bearing date the day and year aforesaid, were granted, issued and delivered by the Commissioner of Patents of the United States of America to plaintiff; that thereby there was granted and secured to plaintiff, his heirs, legal representatives and assigns for the term of seventeen years from and after the 30th day of January, 1917, the exclusive right and liberty of making, using and vending

to others to be used, the said invention throughout the United States of America and the territories thereof all as in and by said original letters patent, or a duly certified copy thereof, to be here in court produced as may be required, will more fully and at large appear.

IV.

That by an instrument in writing dated August 12, 1916, [6] duly executed by plaintiff, plaintiff did sell, assign and transfer to one Quince C. Crane, of San Diego, California, the undivided two-thirds part of the whole right, title and interest in and to said invention and in and to the letters patent therefor aforesaid; that by an instrument in writing, dated September 25th, 1916, duly executed by the plaintiff and by said Quince C. Crane, said Quince C. Crane and plaintiff did sell, assign and transfer to the Crane & Wright Electric Company, a corporation duly organized and existing under the laws of the State of California, of San Diego, California, the entire right, title and interest in and to said invention and letters patent; that said Crane & Wright Electric Company was then a corporation organized under and by virtue of the laws of the State of California, having its principal place of business at San Diego, California; that heretofore, to wit, on March 13th, 1918, said Crane & Wright Electric Company, by its sole surviving directors as its trustees, namely William D. Wright and Ovid E. Mark, did sell, assign, transfer and set over to plaintiff all its right, title and interest, the same being the exclusive right, title and interest in

and to the said invention and letters patent, together with any and all claims of every kind and character arising out of past infringements of said letters patent; that at said time said William D. Wright and Ovid E. Mark were the surviving directors of said Crane & Wright Electric Company and the directors of its property for the purpose of winding up its affairs and at said time said Crane & Wright Electric Company had forfeited its right to do business as a corporation and existed solely for the purpose of winding up its affairs; that by virtue of said assignments plaintiff became and now is the owner of the sole and exclusive right, title and interest in and to said invention and letters patent. [7]

V.

That the said invention is of great value and has gone into extensive use and that all the devices manufactured by plaintiff, or plaintiff's predecessors in interest, have been conspicuously marked by imprinting or marking thereon the word "patented," together with the day and date of the issue of said letters patent, to wit, January 30, 1917.

VI.

That since the grant, issuance and delivery of said letters patent and on divers and sundry dates thereafter, defendant has caused to be made and sold and used, and has made, sold and used, and is now and intends to continue to make, sell and use electric cooking apparatus embodying and containing the said invention patented in and by said letters patent. That defendant has been notified

in writing of the grant, issuance and delivery to plaintiff of said letters patent and infringement by it, aforesaid, but notwithstanding the same has deliberately and wilfully appropriated said invention to his own use and infringed upon said letters patent and has refused and does refuse to desist from said infringement.

Defendant does not know exactly to what extent or how many electric cooking apparatus embodying said invention defendant has manufactured, sold, or used, or caused to be manufactured, sold or used, or the extent of such use, or of the profits or advantages accruing to defendant therefrom or realized therefrom by defendant, and prays full discovery thereof.

VII.

Plaintiff alleges that by reason of the infringements aforesaid plaintiff has suffered large damages and the loss of large number of sales of electric cooking apparatus embodying said invention; that said damages amount to the full sum of [8] Twenty-five Thousand (\$25,000.00) Dollars.

WHEREFORE plaintiff prays:

1. That a writ of injunction issue out of or under the seal of this court enjoining and restraining the defendant, its officers, agents, attorneys, servants, employees and associates, and each and every of them, from making, using or selling in any manner, directly or indirectly, any apparatus containing or embodying the said invention patented in or by said letters patent or any machine or device capable of being used in infringement thereof or capable

of being combined with any other device to be used in infringement thereof and from directly, or indirectly, infringing upon such letters patent in any manner whatsoever, or from aiding, abetting or contributing to any infringement thereof whatsoever.

2. That defendant be ordered, adjudged and decreed to account to and pay over to plaintiff all profits and advantages realized by defendant from said infringement and all damages sustained by plaintiff, or plaintiff's assignor's by reason of such infringements aforesaid, together with the costs of this suit and for such other, further or different relief as to this Court may seem proper and be in accord with equity and good conscience.

WILLIAM D. WRIGHT.

FREDERICK S. LYON,

Solicitor and of Counsel for Plaintiff. [9]

[Endorsed]: No. D-68-Eq. United States District Court, Southern District of California, Southern Division. William D. Wright, Plaintiff, vs. Pacific States Electric Company, Defendant. In Equity. Bill of Complaint. Filed Mar. 22, 1918. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. Frederick S. Lyon, 504-7 Merchants Trust Building, Los Angeles, Cal., Solicitor for Plaintiff. [10]

United States District Court, Southern District of
California, Southern Division.

IN EQUITY—No. —.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant.

Answer of the Pacific States Electric Company, Defendant, to the Bill of Complaint of William D. Wright, Plaintiff.

This defendant now and at all times hereafter reserving unto itself all and all manner of benefit or advantage by exception or otherwise that can or may be had or taken to the manifold errors, uncertainties, insufficiencies and imperfections in said bill of complaint contained, for answer unto said bill, or unto so much and such parts thereof as this defendant is advised it is necessary for it to make answer unto answering says:

1. This defendant has no knowledge as to the citizenship and residence of the plaintiff as stated in the bill of complaint and leaves the plaintiff to make such proof thereof as he may be advised is necessary.

2. Defendant admits that it is a corporation organized and existing under and by virtue of the laws of the State of California, and that it has a place of business at the city of Los Angeles, county of Los Angeles, and State of California. [11]

3. Defendant admits that pretended letters patent of the United States, No. 1,214,486, for certain alleged new, original and useful improvements in Electric Cooking Apparatus were granted to one William D. Wright on the 30th day of January 1917, but whether such letters patent were granted and issued in due form as by law required defendant has no knowledge save as stated in said bill of complaint and accordingly denies the fact and leaves the same to be proven as plaintiff may be advised.

Upon information and belief defendant denies that said William D. Wright was the true, original, first and sole inventor of the subject matter set forth in the said letters patent No. 1,214,486; denies that the alleged improvements disclosed therein were new or useful to any material extent; and further denies that the same were not known or used by others in this country, or had not been patented or described in any printed publication in this or in any foreign country before the alleged invention thereof by said Wright. Defendant further denies that the alleged invention described in said patent has not been in public use or on sale in this country for more than two years prior to the said Wright's application.

Upon information and belief defendant charges the contrary to be true in respect to the several particulars named, and therefore denies the facts alleged.

4. Defendant has no knowledge of the facts upon which the allegations of paragraph 4 of the

bill of complaint are based and leaves the plaintiff to his proof thereof.

5. Defendant denies that things covered by said letters patent are of any great value or profit, or of any material benefit or advantage; and denies that said alleged invention [12] has gone into extensive use.

As to the marking by plaintiff of any goods made under the said patent as alleged defendant has no knowledge and leaves plaintiff to his proof thereof.

6. This defendant further answering upon information and belief avers that long prior to the supposed invention of the alleged improvements set forth in the said patent, the same thing or things, or material parts thereof, had been patented and described in various prior letters patent of the United States and foreign countries, and in various printed publications both here and abroad, and among others the following, to wit:

482,074	Sept. 6, 1892	Capek
493,422	Mar. 14, 1893	Capek
797,604	Aug. 22, 1905	Perky
910,479	Jan. 19, 1901	Andrews
956,174	Apr. 26, 1910	Richardson
973,593	Oct. 25th, 1910	Van Aller
987,293	Mar. 21st, 1911	Gale
992,417	May 16th, 1911	Gale
1,060,263	Apr. 29th, 1913	Lamb
1,060,264	Apr. 29th, 1913	Lamb
1,060,265	Apr. 29th, 1913	Lamb
1,060,266	Apr. 29th, 1913	Lamb
1,060,267	Apr. 29th, 1913	Lamb
1,090,924	Mar. 24th, 1914	Lawrence

and others now unknown to this defendant, but particulars concerning which defendant craves leave to add hereafter.

7. On information and belief defendant avers that said letters patent No. 1,214,486 were and are null and void because [13] the alleged improvements forming the subject matter thereof were in public use and on sale in this country prior to the said Wright's alleged invention and application for said letters patent, and were known to the following named persons and parties at the following named places, to wit:

John V. Capek, of New York, New York, at New York, New York.

Henry D. Perky, of Worcester, Massachusetts, at Worcester, Massachusetts.

William S. Andrews, of Schenectady, New York, at Schenectady, New York.

Earl H. Richardson, of Ontario, California, at Ontario, California.

Tycho Van Aller, of Schenectady, New York, at Schenectady, New York.

H. B. Gale, of Natick, Massachusetts, at Natick, Massachusetts.

Joseph F. Lamb, of New Britain, Connecticut, at New Britain, Connecticut.

Simplex Electric Heating Company, of Boston, Massachusetts, at Boston, Massachusetts.

Landers, Frary & Clark, of New Britain, Connecticut, at New Britain, Connecticut.

Nelson E. Mann, of New Britain, Connecticut, at Boston, Massachusetts.

And others whose names and addresses are now unknown to this defendant but particulars concerning which this defendant craves leave to add hereafter. [14]

9. Defendant denies that it has infringed upon any valid patent rights of the plaintiff; that it has inflicted any great or irreparable damage or injury to the plaintiff, or that it intends to do so unlawfully. Defendant denies the equities of the bill of complaint; denies that the plaintiff has any right to an accounting of profits, damages, gains, advantages, or costs to be recovered from this defendant; denies that the plaintiff has any right to any damages of any nature whatsoever; denies said plaintiff's right to an injunction either temporary or perpetual; and also denies that said plaintiff is entitled to any other or further equitable relief whatsoever.

All of which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court may direct. Wherefore this defendant humbly prays to be hence dismissed, with reasonable costs and charges in this behalf most wrongfully sustained.

PACIFIC STATES ELECTRIC CO.

By H. C. CHAPMAN.

LUCIUS P. GREEN,

Solicitor for Defendant.

H. E. HART,

Counsel.

Dated at Los Angeles, June 7th, 1918. [15]

State of California,
County of Los Angeles,—ss.

H. C. Chapman, being by me first duly sworn, deposes and says: That he is the Assistant Treasurer of the Pacific States Electric Company, defendant above named, and as such he is authorized to and makes this verification for and on behalf of said defendant, in the above-entitled action; that he has heard read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

H. C. CHAPMAN.

Subscribed and sworn to before me this 7th day of June, 1918.

[Seal]

LUCIUS P. GREEN,

Notary Public in and for the County of Los Angeles, State of California. [16]

[Endorsed]: D—68. United States District Court, Southern District of Cal. In Equity—No. —. William D. Wright, Plaintiff, vs. Pacific States Electric Company, Defendant. Answer. Received copy of the within answer this 15th day of June, 1918. Frederick S. Lyon, Solicitor for Plaintiff. Filed Jul. 3, 1918. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy. Clerk. Law Offices of Harrie E. Hart, Hartford, Conn., Connecticut Mutual Bldg. [17]

United States District Court, Southern District of
California, Southern Division.

IN EQUITY.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC COMPANY,
Defendant.

Evidence on Behalf of the Defendant.

Boston, Massachusetts, Jan. 14, 1920.

Evidence taken on behalf of defendant, pursuant to notice attached hereto, before J. M. Fuller, a notary public in and for the county of Suffolk, State of Massachusetts.

Appearances: LEONARD S. LYON, in Behalf of
Plaintiff;

H. E. HART, in Behalf of Defendant.

Deposition of Arthur W. Kelsey, for Defendant.

ARTHUR W. KELSEY, called as a witness in behalf of the defendant, and having been duly sworn, testifies in answer to interrogatories as follows: [18]

Q. 1. What is your name, age, residence and occupation?

A. Arthur W. Kelsey; 39 years; 62 River St., Cambridge, Mass. Repair foreman for Simplex Electric Heating Co.

(Deposition of Arthur W. Kelsey.)

Q. 2. How long have you been associated with the Simplex Electric Heating Co.?

A. Seventeen years.

Q. 3. What class of goods does the Simplex Electric Heating Co. manufacture?

A. Electric-heating goods.

Q. 4. For what character of use are these goods intended?

A. Households and restaurants; also laundries.

Q. 5. How are the goods used, or for what purpose? A. Cooking and ironing.

Q. 6. Please give the names of several of the electrically heated cooking articles or utensils which the Simplex Company makes.

A. Broilers, griddles, waffle-irons, and ranges and bake-ovens.

Q. 7. For how long, to your personal knowledge, has the Simplex Company been making electrically-heated utensils such as you have named?

A. Over twenty years.

Q. 8. This covers most, if not all, the period of your employment with the Simplex Company?

A. Yes, sir.

Q. 9. I understand you to testify that among others of these cooking utensils the Simplex Co. has made electrically-heated waffle-irons. Is that correct? A. Yes, sir. [19]

Q. 10. For how long a period to your definite, personal knowledge has the Simplex Company been making electrically-heated waffle-irons?

A. For the last thirteen years.

(Deposition of Arthur W. Kelsey.)

Q. 11. Please look at the device I show you, and state whether or not you recognize it, and if so, as what.

Mr. LYON.—The form of the question is objected to as leading to questions of prior use. The witness should be interrogated regarding the prior structure before the supposed structure is exhibited to the witness.

Question withdrawn.

Q. 12. In the course of your work with the Simplex Co., did you come to be familiar with the construction of the electric waffle-irons made by it?

A. Yes, sir.

Q. 13. Please explain briefly what the character of your work with the Simplex Co. has been as a result of which you became familiar with the construction of the Simplex electric waffle-iron.

A. By taking all waffle-irons apart when they came back for repairs, to find out what was the trouble.

Q. 14. You have, then *be* accustomed to assemble and disassemble the Simplex electric waffle-irons, have you? A. Yes, sir.

Q. 15. And for how long a time have you been doing such work? A. Seventeen years.

Q. 16. Will you now describe, briefly, what the construction of the Simplex Electric waffle-iron is.

A. The base of the waffle-iron is a cast-iron base. It has phosphorous bronze contacts, and has a black japan guard around the contacts on the face. There are two [20] heating elements joined to-

(Deposition of Arthur W. Kelsey.)

gether by rivets. Each heating element has two brass contacts. The inside of the element is enameled with a winding embedded in the enamel, with terminal wires which connect to the brass contacts. The outer section of the heating element has a wooden handle on it, which is called the top heater when it is turned over.

Q. 17. You have spoken of heating elements hinged together with rivets, and then of the inside of the element as equipped with enamel with a winding embedded in the enamel. What is that winding for? A. To heat the iron.

Q. 18. And it is that winding which is connected to the contacts? A. Yes, sir.

Q. 19. And where, with respect to the winding, is the waffle surface of the device?

A. On the other side of the casting.

Q. 20. Then, as I understand you, there are two castings hinged together by rivets, and on the one face of each casting is a waffle surface and on the opposite face this embedded wire by which the iron is heated. Is that correct? A. Yes, sir.

Q. 21. Would you be able to recognize the Simplex Electric waffle-iron if you saw one?

A. Yes, sir.

Q. 22. Please look at the device I show you and ask you if you recognize it, and if so as what.

A. A 1400 waffle-iron.

Q. 23. Made by whom? [21]

A. The Simplex Elec. Heating Co.

Q. 24. Is it possible by removing any part of this

(Deposition of Arthur W. Kelsey.)

iron to disclose the enamel in which the winding by which the iron is heated is embedded?

A. Yes, sir. By removing two covers that are on the bottom of the elements.

Q. 25. And how are these covers held in place?

A. Each by two screws.

Q. 26. Will you please remove one of these covers and say whether or not you find underneath it the enamel and any indication that the heating wire is embedded in it. A. Yes, sir.

Q. 27. Do you see the wires?

A. I see two lead wires, which we call terminals.

Q. 28. And to what are they connected?

A. To two screws which the brass contacts are attached to.

Q. 29. I find on the enamel which you have uncovered by removing the cover the numeral "110." What does this indicate? A. The voltage.

Q. 30. There are other numerals on the enamel. What are they, of you can make out, and what do they indicate, if you know?

A. 4/3/18 represents the month, day and year that the article was manufactured.

Q. 31. Please say whether or not this Simplex Elec. waffle-iron which you have identified is exactly the same in appearance and construction with what you have been familiar with during your work with the Simplex Company?

Mr. LYON.—Objected to as leading. [22]

A. Yes, sir.

Q. 32. And when you have testified that you have

(Deposition of Arthur W. Kelsey.)

been familiar with the construction of the electric waffle-irons made by the Simplex Elec. Heating Co. *fo* at least thirteen years, were you referring to electric waffle-irons like the one you have here identified?

A. Yes, sir; with a slight change in the waffle-iron.

Q. 33. What was that change?

A. These identifications here were not quite so high.

Q. 34. Is there any other difference?

A. There is a difference on the guard for the base contacts.

Q. 35. What was this difference?

A. It is made a little higher so as to give more protection for the contacts.

Q. 36. I show you a catalog and ask you if you know what it is.

A. Yes, sir. It is a catalog of the Simplex Elec. Heating goods which they manufacture.

Q. 37. Does it carry a date.

Mr. LYON.—Objected to as incompetent.

A. Yes, sir; April 1904.

Q. 38. Please look at the waffle-iron illustrated on page 28 of this catalog, and say whether or not it is a representation of the waffle-irons as made by the Simplex Company during the time you have been familiar with their manufacture of electric waffle-irons. A. Yes, sir.

Q. 39. What does the number under the cuts of those electric waffle-irons mean?

(Deposition of Arthur W. Kelsey.)

A. The type numbers. The 1400 is the black japan finish. 1401 was the same thing nickel plated.
[23]

Q. 40. Do the electric waffle-irons made by the Simplex Company have any other type numbers?

A. Yes, sir. A 1402, which would be black japan finish, and a 1403, which would be nickel finish. These are three-part waffle-irons.

Q. 41. How long have the waffle-irons manufactured by the Simplex Co. been identified by these type numbers? A. Ever since they were made.

By Mr. HART.—The waffle-iron identified by the witness in answer to Q. 22 is offered in evidence as Defendant's Exhibit No. 1, Simplex Electric Waffle-Iron. The catalog shown to witness and identified by him in answer to Q. 36 is offered in evidence as Defendant's Exhibit No. 2, Simplex Catalog of 1904.

Mr. LYON.—Objected to as incompetent, irrelevant, immaterial, not properly proven.

Mr. HART.—It is stipulated and agreed by and between counsel for the respective parties that photostatic print of the first page and of page 28 of the catalog, Exhibit 2, may be used in lieu of the original. Subject of course to any objections on the part of plaintiff.

Q. 42. Have you with you any records showing the manufacture or shipment of electric waffle-irons by the Simplex Co. and if so will you produce them.

A. Witness presents a book bearing on its cover the inscription:

(Deposition of Arthur W. Kelsey.)

Serial Record

Simplex Elec. Heat Co.

and on the next line the numerals, written in ink, on the canvas cover of the book:

223481 to 326490 [24]

Q. 43. What is this book you have produced?

A. A serial record book of the Simplex Elec. Heating Co.

Q. 44. How and in what manner does this book contain or show records relating to electric waffle-irons?

Mr. LYON.—Objected to as incompetent.

A. It shows a serial number and a type number and the voltage and the date of shipment and the order number of every waffle-iron that was shipped during those consecutive numbers that are on the outside of the cover.

Q. 45. And does it show shipment of other goods beside waffle-irons? A. Yes, sir.

Q. 46. Please turn to a few places in this book where reference to electric waffle-irons is to be found.

A. On the page which I have numbered "A," Ser. No. 224,802, entered as 1400 waffle-iron, 110 volts, and the date of shipment is 11-5-07. The shop order No. is 60,175. 224,803 is the same, and 224,804, 5 and 6 has a record of 1400 waffle-iron; 115 volts. The first one is on shop order 50747, and the last two on Shop Order 59778. Serial No. 224,807 is a 1401 waffle-iron, 115 volts, shipped 11-6-07, on shop order 50747.

Q. 47. Now, what does this Serial Number mean?

(Deposition of Arthur W. Kelsey.)

Please explain about these Serial Numbers.

A. Every article that the Simplex Electric Heating manufacture has a number on them beginning with No. 1, so as to be able to tell whom they were shipped to and when they were shipped out.

Q. 48. And are these numbers given to the various articles in rotation as they are shipped out?

A. No, sir; not as they are shipped out, but as they are assembled.

Q. 49. So that a higher Serial No. shows that that particular article was assembled later than a lower Ser. No. Is [25] that correct? A. Yes, sir.

Q. 50. Please point to other pages in this record showing electric waffle-irons and give the dates of the shipments.

A. On page I have lettered "B" sales are shown on the following dates: 5-19-08, 12-2-08, 7-18-08, 12-2-08, 6-4-08, and 6-20-08, 7-20-08.

Q. 51. Please merely letter other pages on which the Ser. Nos. and shipping dates of electric waffle-irons are indicated.

A. I have numbered such pages "C," "D," "E," "F," "G."

Q. 52. Now, the electric waffle-irons indicated on the various pages of this book which you have marked were they like the waffle-iron Exh. 1 which you have identified? A. Yes, sir.

Q. 53. And they were all electric waffle-irons?

A. Yes, sir.

Mr. HART.—The book produced by the witness is offered in evidence as Def. Exh. 3, Simplex Com-

(Deposition of Arthur W. Kelsey.)

pany's Serial No. Book. And it is stipulated and agreed by and between counsel that in lieu of producing the original book which is extremely bulky and necessary to the business of the Simplex Elec. Htg. Co. photostatic prints of the pages which have been marked by the witness may be used in lieu of the book but with full force and effect as an original.

Mr. LYON.—The receipt in evidence is objected to as incompetent, the same not having been properly proven, and there is no objection to substituting photostatic copies. [26]

Q. 54. Who makes the entries in these Ser. No. books such as you have produced?

Mr. LYON.—Objected to as immaterial, irrelevant.

A. A clerk hired for that purpose.

Q. 55. And do these sheets or pages which you have referred to contain original entries?

Mr. LYON.—Objected to as incompetent.

A. Yes, sir.

Direct examination closed.

XQ. 56. Are these Serial Nos. you have referred to placed on the respective articles to which they pertain?

A. They are stamped on the name plates, and also on the castings.

XQ. 57. Will you point out on Def. Exh. 1, such serial number?

A. In the last 5 years we have not used serials.

XQ. 58. Then no Ser. No. appears on Def. Exh. 1; is that correct? A. Yes, sir. None appears.

(Deposition of Arthur W. Kelsey.)

XQ. 59. Your duties with the Simplex Electric Co. are confined to mechanical work, are they not?

A. Yes, sir.

XQ. 60. You are not in charge of shipping or auditing depts. of the company, are you? By auditing, I mean, clerical department of the company.

A. No, sir.

XQ. 61. Your duties are not connected with such departments, are they?

A. In a way, I have orders from the office that have to pass through the shipping room before they are out.

XQ. 62. But personally you do no work in any department except your own, do you?

A. No, sir. [27]

XQ. 63. Your work is confined to repairing defective articles, isn't it? A. Yes, sir.

XQ. 64. Explain in detail what repairs you have made on electric waffle-irons of the type referred to by you.

A. I had to put on new heaters; either a top or a bottom heater; and sometimes the base contacts.

XQ. 65. Anything else?

A. Sometimes to repaint the base and put on a new cord and refinish it in salable condition.

XQ. 66. The necessity for making repairs of the kind referred to by you is frequent, is it?

A. Several a year.

XQ. 67. And you make repairs on other articles than waffle-irons, is that correct?

A. Yes, sir.

(Deposition of Arthur W. Kelsey.)

XQ. 68. Then as I understand you, the type of waffle-iron referred to by you is frequently returned to the factory for repairs; is that correct?

A. Yes, sir.

Mr. HART.—From your experience at the Simplex Elec. Heating Co., would you say that the Simplex electric waffle-iron was a successful and practical device?

Mr. LYON.—Objected to as grossly leading.

— Yes, sir.

Mr. HART.—Are the Simplex Elec. waffle-irons *been* sold continually and have they been so sold since you have known anything about them?

Mr. LYON.—Same objection and a further objection that the question is not proper redirect examination. [28]

Mr. HART.—Question withdrawn.

Mr. HART.—Please say whether or not from a practical standpoint the electric waffle-irons made by the Simplex Co. were successful.

Mr. LYON.—Objected to as leading and improper redirect examination. A. Yes.

Deposition closed. [29]

Deposition of James Edward Lawler, for Defendant.

Q. 1. What is your name, age, residence and occupation?

A. James Edward Lawler; 31 years; 223 Norfolk Street, Cambridge, Mass; Tracer, with the Simplex Elec. Heating Co.

Q. 2. How long have you been with that company?

(Deposition of James Edward Lawler.)

A. Fourteen years, with the exception of one year that I was out in the service.

Q. 3. What have your duties been?

A. Formerly in the assembling-room for four years.

Q. 4. You mean the past four years?

A. Why, four years foreman and one year tracer.

Q. 5. Before that, what were you doing?

A. Assembling.

Q. 6. What kind of goods does the Simplex Co. manufacture?

A. Electric griddles, electric boilers, electric flat-irons, electric pads, and electric waffle-irons.

Q. 7. And have they been engaged in the manufacture of such goods since you have been with the company? A. Yes, sir.

Q. 8. Are you familiar with the construction of the electric waffle-irons which they have made?

A. Yes, sir.

Q. 9. And *for* long have you been familiar with the construction of these electric waffle-irons?

A. For fourteen years.

Q. 10. That is, throughout the period of your employment? A. Yes, sir.

Q. 11. Will you describe briefly the construction of these electric waffle-irons made by the Simplex Co. during your employment with them? [30]

A. Square cast-iron base; phosphorous bronze contacts; two cast-iron heaters; wood handle attached to one heater for the purpose of turning over top heater; brass contacts on sides of both heaters

(Deposition of James Edward Lawler.)

connected to terminals, which in turn are attached to winding embedded in enamel. The bronze contacts on base used to make the difference in heats which throw windings in heaters for series or multiple, thereby lowering the amount of current used.

Q. 12. Where is this winding applied to the heaters?

A. On the ground coat of enamel, which has been baked to the heater casting.

Q. 13. Do you recognize the device I show you, and if so as what?

A. As a 1400 electric waffle-iron.

Q. 14. How do the electric waffle-irons which you have been familiar with throughout your connection with the Simplex Co. as manufactured by them compared with this iron I have shown you.

The witness is shown Def. Exh. 1, Simplex Waffle-iron.)

A. The same.

Q. 15. And is this true for the entire period of your association with the Simplex Co.?

A. Yes, sir.

Q. 16. Are you familiar with the catalog I show you, and if so what is it?

A. Catalog of the Simplex Elec. Htg. Co.

Q. 17. Does it carry date and if so what?

(Showing Def. Exh. 2, Simplex Catalog.)

Mr. LYON.—Objected to as incompetent.

A. Catalog No. 12 of April, 1904. [31]

Q. 18. Please look at the illustration on page 28 and say what it is. A. 1400 waffle-iron.

(Deposition of James Edward Lawler.)

Q. 19. Have you been familiar with waffle-irons as here illustrated, and if so, for how long?

A. Have been familiar for fourteen years.

Q. 20. And as made by whom?

A. By the Simplex Electric Heating Company.

Q. 21. Are you familiar with the Serial Record book, Def. Exh. 3, which I show you, and if so, explain what it is.

A. A serial record book of the Simplex Electric Heating Company.

Q. 22. How is this book used?

A. Used by the shipping department or shipping clerk. Used for showing record and date of shipment of each article; also giving type and voltage.

Q. 23. Please turn to one of the pages in this book and explain more in detail what you refer to as records of shipments of waffle-irons by the Simplex Company.

A. On page "A" shows a record of No. 224,802, calling for one 1400 waffle-iron, 110 volts, shipped 11-5-1907, and it was shipped on Shop Order 60175.

Q. 24. And what does the Serial Number represent?

A. Each and every article with a heating element is given a number. The number that we call the Serial No. Those numbers started from No. 1 and have gone consecutively.

Q. 25. Will you look at the pages lettered B, C, D, E, F and G and see if you find similar records as to the sale of waffle-irons? A. Yes, sir; I do.

(Deposition of James Edward Lawler.)

Q. 27. And is this Serial Book a book of original entry.

A. Objected to as incompetent, witness not having qualified to answer.

Q. 28. Yes, sir.

Q. 29. In answering the last question did you answer from your own personal knowledge as to the way this book is used and as to who makes the entries in it?

Mr. LYON.—Objected to as leading.

A. Yes, sir.

Direct examination closed.

No cross-examination.

It is stipulated and agreed by and between counsel that the signatures to the two foregoing depositions are waived. [33]

[Endorsed]: No. D-68. U. S. District Court, Southern District of California, Southern Division. William D. Wright v. Pacific States Elect. Co. Deposition of A. W. Kelsey. Filed Jan. 24, 1920. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. [34]

United States District Court, Southern District of
California, Southern Division.

IN EQUITY.

WILLIAM D. WRIGHT.

Plaintiff,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant.

Hartford, Conn., January 15, 1920.

Appearances: LEONARD S. LYON, Esq., in Be-
half of Plaintiff;

HARRIE E. HART, Esq., in Be-
half of Defendant.

Deposition of Nelson E. Mann, for Defendant.

NELSON E. MANN, a witness called in behalf
of the defendant, being duly sworn, deposes and
says as follows in answer to interrogatories by Mr.
Hart:

Q. 1. What is your name, age, residence and oc-
cupation?

A. Nelson E. Mann; 46 years old; 100 Robbins
Avenue, Maple Hill, Newington, Connecticut.
Electrical Engineer. I am employed by Landers,
Frary & Clark, of New Britain.

Q. 2. How long have you been connected with the
business of Landers, Frary & Clark?

A. Since November 13, 1916.

Q. 3. And in what business were you engaged

(Deposition of Nelson E. Mann.)

before you went with Landers, Frary & Clark?

A. Manufacturing electric heating devices.

Q. 4. On your own account? A. Yes, sir.

Q. 5. Where?

A. Columbia, Pennsylvania, was the last place.

Q. 6. And what became of your business after you went with Landers, Frary & Clark? [35]

A. I sold out to Landers, Frary & Clark.

Q. 7. So that you had been proprietor of your own business in the manufacture of electrical heating appliances? A. Yes, sir.

Q. 8. Does that phrase "heating appliances" include cooking utensils? A. Yes, sir.

Q. 9. Prior to engaging in business for yourself by whom were you employed?

A. The Simplex Electric Heating Co., Cambridge, Massachusetts.

Q. 10. And about what period of time, by year, was covered by your employment with the Simplex Co.?

A. I left them in 1910, that I am positive. When I began was somewhere around 1904 or 1905.

Q. 11. What was the business of the Simplex Company?

A. Manufacturing electric heating devices.

Q. 12. And in this case does that phrase "heating devices" include cooking utensils of various types?

A. Everything in the electric heating line.

Q. 13. Name some of the electrical heating cook-

(Deposition of Nelson E. Mann.)

ing utensils made by the Simplex Company while you were engaged with them.

A. They made electric chafing-dishes, percolators, electric ranges, frying-pans, dics stoves—hot plate, sometimes it is called—waffle-irons, toasters—that is all I can recollect on the spur of the moment; there is another one—broilers.

Q. 14. You have mentioned electric waffle-irons, Were such goods manufactured by the Simplex Company all during the period of your employment with them?

A. No, they were not; they were manufactured during the [36] last four or five years; I am not sure about that,—some years before I left them; they were developed while I was there.

Q. 15. Were you familiar with the construction of them? A. Yes, sir.

Q. 16. Just state briefly what the construction was.

A. It consisted of a cast-iron base, with a two-part hinged heater setting on a base, supported by the base, so that one part could be turned over on the other, with a contact on one end to change the circuit to give the different degrees of heat. The waffle-iron was made of cast-iron, black, japanned.

Q. 17. Where was the heating element?

A. The heating element was on the bottom—you can't call it bottom; on the side, on the other side of the casting, embedded in enamel, from the cooking surface.

Q. 18. Please look at the device I now show you.

(Deposition of Nelson E. Mann.)

I ask if you recognize that. (Showing witness Defendant's Exhibit No. 1.)

A. Yes, sir; that is a waffle-iron, practically the same as made when I was there.

Q. 19. By whom?

A. The Simplex Electric Heating Co.

Q. 20. And is this Exhibit No. 1, the electric waffle-iron, made as just described by you by the Simplex Company?

A. Yes, exactly, with minor changes.

Q. 21. What are the minor changes?

A. The guard protecting the electric contacts.

Q. 22. What about this guard?

A. That has been added since I was with them.

Q. 23. But in other respects is the iron, Exhibit No. 1, substantially identical with those irons which were [37] made by the Simplex Company when you were connected with them? A. It is.

Q. 24. Do you know a Mr. Lawler? A. I do.

Q. 25. Where did you know him?

A. At the Simplex Electric Heating Co.

Q. 26. Do you know a Mr. Kelsey?

A. Yes, sir; at the Simplex Electric Heating Co.

Q. 26. Do you remember any records which were kept as to the various goods manufactured by the Simplex Company?

A. Yes, sir; there was a system of records.

Q. 27. Please describe the system briefly.

A. At the time I was with the Simplex Company they had paper covered books in which were recorded all the heating appliances, consisting of a

(Deposition of Nelson E. Mann.)

serial number which was stamped on all heaters, the voltage of the appliance, and the date of the assembling; the order numbers, the factory order numbers on a larger portion of it; there were some they didn't put the order number on. That record was kept in the Assembling Department and as each article was assembled and the name plate assembled, it was recorded in these records.

Q. 28. What was recorded?

A. The serial number and data was recorded in these record books.

Q. 29. Was there any indication in connection with these serial numbers as to the character of the goods, to which each serial number related?

A. There was a type number.

Q. 30. What was the type number?

A. Each particular style of goods had a number to [38] distinguish the class of goods. The serial numbers were used consecutively in keeping a record of the goods manufactured.

Q. 31. Did you have anything to do with the making of the records in those books?

A. Yes, I entered a great many personally. The employees under my supervision did most of the entering.

Q. 32. What was your position with the Simplex Company?

A. I was foreman of the electric heating assembling department.

Q. 33. In your capacity as foreman, were you thoroughly familiar with the construction of the

(Deposition of Nelson E. Mann.)

various electrical heated utensils which they made?

A. I was.

Q. 34. Do you happen to know any individuals or concerns to whom these electric waffle-irons, as made by the Simplex Company, were sold, when you were with that Company?

A. Well, indirectly. I don't know as it would be any evidence in court. I had nothing to do with the selling end; it is only indirectly,—hearsay.

Q. 35. Did you ever see any of the electric waffle-irons, as made by the Simplex Company, in use?

A. Yes.

Q. 36. Where? A. At Harvard College.

Q. 37. Are you able to say whether Harvard College had one or more of them?

A. Yes, they had half a dozen or more.

Q. 38. Are you able to say whether or not electric waffle-irons, as made by the Simplex Company, were successful, usable structures, and if so please so state. [39]

A. Those I saw in use were successful.

Q. 39. And did they make and sell them in substantial quantities while you were connected with them?

A. They had continuous orders from various parts of the country.

Direct examination closed.

No cross-examination.

Deposition closed.

Deposition of Joseph F. Lamb, for Defendant.

JOSEPH F. LAMB, a witness called in behalf of the defendant, being duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Hart:

Q. 1. Give your name, age, residence and occupation.

A. Joseph F. Lamb; 45; 29 Park Place, New Britain. I am Vice-president and General Superintendent of Landers, Frary & Clark.

Q. 2. How long have you been connected with that concern?

A. Seventeen years the 23d of this month.

Q. 3. Just name some of the different lines of manufacture that Landers, Frary & Clark are engaged in.

A. They make meat-choppers, food-choppers, electric heating appliances such as percolators, chafing-dishes, coffee-pots, stoves, waffle-irons, curling-irons, grilles, shaving mugs, toasters, cutlery, weighing scales, breadmakers, cakemakers, vacuum bottles, pocket-knives—that is, cutlery.

Q. 4. How long has Landers, Frary & Clark been making electrical heating appliances?

A. Why, since 1912. The first development of electrical appliances was started on Thanksgiving Day, 1911.

Q. 5. When you say “electrical heating appliances” you mean [40] cooking utensils of various sorts, among other things? A. Yes.

(Deposition of Joseph F. Lamb.)

Q. 6. What was the first development of this electrical line, what type of apparatus?

A. Percolator.

Q. 7. And the inception of that was on what date? A. Thanksgiving Day, 1911.

Q. 8. And with what rapidity did the development of other apparatus follow?

A. Well, they were all finished inside of six months. I say all; what I refer to now is

Q. 9. percolator, chafing-dish, disc stove and the sad-iron, and tea-pots—they were all developed inside of six months.

Q. 10. And how soon thereafter did they go on to the market?

A. I cannot give you the exact date when they went on the market.

Q. 11. Well, approximately.

A. I think they were on the market in six months, about six months, but I am not positive about just the date.

Q. 12. Have you subsequently added to this line of goods? A. Yes, in a great many ways.

Q. 13. And have you continued to market them?

A. Yes.

Q. 14. Over what territory?

A. The United States, Canada and Europe—and Australia.

Q. 15. And you are still making and selling this electrical line? A. Yes.

Q. 16. And have your various structures met with success in the trade? A. Yes.

(Deposition of Joseph F. Lamb.)

Q. 17. And how is this indicated? [41]

A. By increased sales. We have increased our business very materially every year.

Q. 18. Starting with the percolator, which I understand is the first of the electrical apparatus which you developed, will you please indicate, in a general way, what the construction was?

A. There was a body, made with a heating unit attached to the bottom. This was to contain the water for the coffee. A base was then made and soldered and riveted to the bottom of the body. I have in my hand a section to show just the construction, which is the original construction and has never been changed. The lower section is the base and the upper section is the body. The unit is attached to the body and the base encloses the unit.

(The device produced by the witness is offered as Defendant's Exhibit 4—section of percolator base.)

Q. 19. This body, then, as I understand, has a surface at its bottom, which rests upon and is secured to the top of the casing or base; is that correct? A. Yes.

Q. 20. And what material is this base made of?

A. Brass.

Q. 21. Is it a casting or sheet metal?

A. Sheet metal.

Q. 22. And is the bottom of this base closed in?

A. It is. On the original base there was an opening left large enough in the bottom to put in the unit, a plate was fitted in the opening, and it

(Deposition of Joseph F. Lamb.)

was then soldered, making it a closed compartment.

Q. 23. Why did you close up this hole in the base, as you [42] have just described?

A. To keep the water from the unit and to conserve the heat, because this utensil would have to be washed, and water getting into the unit would cause it to short circuit.

Q. 24. How did it conserve the heat?

A. By making a dead air space, which is one of the best nonconductors of heat that there is.

Q. 25. Now, what was the next electrical utensil you developed and put out, after the percolator?

A. The chafing-dish.

Q. 26. And will you produce parts of a chafing-dish before you completely manufactured and indicate how that is put together.

A. The construction of the chafing-dish is almost identical with the percolator so far as the body and the base is concerned, the same method being applied.

Q. 27. And in this device you have produced in two parts—what is the larger part?

A. The cooking part.

Q. 28. And the smaller part?

A. The base which encloses the unit.

Q. 29. And in assembling these parts, how are they brought together?

A. By being riveted and then soldered together.

Q. 30. You mean the cooking part is riveted and soldered to the base? A. Yes.

Q. 31. You have testified that this is done in a

(Deposition of Joseph F. Lamb.)

similar manner to what you described in connection with the percolator. A. I have. [43]

Q. 32. And the larger or cooking part rests upon the top of the base? A. Yes.

Q. 33. And of what kind of material is the base made? A. Sheet metal.

Q. 34. And is the opening which appears in the bottom of this base part closed in? A. It is.

(Exhibit produced by the witness is offered in evidence as Defendant's Exhibit 5—partly completed chafing-dish.)

Q. 35. What is this article I hand you?

A. Chafing-dish, with a section cut away to show the construction.

Q. 36. And in the base of this chafing-dish which I have just shown you, the bottom of the cooking portion overhangs and is supported on the upper edge of the base; is that correct? A. It is.

Q. 37. Does this construction generally correspond to the construction which you have described in connection with the percolator, Exhibit 4?

A. It does.

Q. 38. And the unit is attached to what?

A. To the cooking utensil.

(Chafing-dish shown to the witness is offered in evidence as Defendant's Exhibit 6—chafing-dish with cut section.)

Q. 39. Now, what was the next piece of electrical apparatus you made after the chafing-dish?

A. The sad-iron.

Q. 40. And in the construction of the body of the

(Deposition of Joseph F. Lamb.)

sad-iron, [44] is the iron I show you like the iron that you first made? A. It is.

Q. 41. And when was this made?

A. The first iron was made in the week of June 30—July 6, 1912.

Q. 42. That is the date they were manufactured for sale? A. Yes.

Q. 43. And irons were sold pretty soon after that date?

A. Yes. The first sales were in November of 1912.

Q. 44. Now, please state generally what the construction of this iron is.

A. The base of the iron—the sole plate of the iron, then a unit on the upper side of the sole plate, and then the pressure plate to hold the unit against the sole plate, and then a sheet metal shell enclosing the whole and fastened to the sole plate, with its edge against the flange.

(Iron shown witness is offered in evidence as Defendant's Exhibit 7—sad-iron.)

Q. 45. What was the next electrical article you made? A. Disc stove.

Q. 46. Please briefly outline the steps which you followed in the production of the disc stoves.

A. In the development of the disc stove we made the plate or disc for cooking on, and then the unit was attached to the underside of the disc, and then the plate screwed to the disc, and then a drawn sheet metal shell was fastened to the disc by three screws, enclosing the unit in such a manner that the

(Deposition of Joseph F. Lamb.)

flange of the stove overlapped the shell that enclosed the unit on the underside. [45]

Q. 47. And how was the disc supported in this first stove—or cooking surface supported?

A. On the edge of the sheet metal shell.

Q. 48. Did this stove work all right? A. Yes.

(Stove produced by the witness is offered in evidence as Defendant's Exhibit 8—first disc stove.)

Q. 49. And when was the first one made?

A. It was made in the week of June 23–29th, 1912.

Q. 50. And how soon after that did they go on to the market for general sale?

A. Early in 1913.

Q. 51. Now, what, if any, changes have you made in this stove and if any please describe what they were and why they were made?

A. We found that with only one shell to enclose the heating unit there was so much heat from the disc stove that it discolored the nickel plate of the shell, and after it had been in use for a short time it didn't have a nice appearance, and so to overcome this we added the second shell that was supported by three supports to the shell that enclosed the unit and was attached to the disc, and we left a space between the top edge of the shell and the disc to allow for circulation of air and prevent the outside shell from becoming discolored by heat.

(The stove last referred to by the witness is offered in evidence as Defendant's Exhibit 9—disc stove with extra shell.)

Q. 52. In this Exhibit 9 I see a section has been

(Deposition of Joseph F. Lamb.)

cut from it. Please look at the cut surface of this stove, Exhibit [46] 9, and state what the parts are which are to be seen.

A. The upper part is the disc or cooking member. To the underside of this is attached the unit, which is held up against the disc by the pressure plate. These all appear to be in one piece as one looks at the cut surface. The cooking surface, or disc, is supported by a drawn sheet metal shell, being supported on the edge of the sheet metal shell. Enclosing all is a nickel sheet metal shell, supported on the underside of the supporting shell for the disc, out of contact with the cooking surface.

Q. 53. Please state what the device I now show you is. A. Tourists' Iron.

Q. 54. And what is the construction of the iron itself?

A. It has a sole plate and a cover clamped thereto and a covering shell which encloses all and rests against the flange on the edge of the sole plate.

Q. 55. Will you very briefly state the different manners of use of this Tourists' Iron.

A. This Tourists' Iron is used for pressing, as a regular sad-iron; for heating a curling-iron; and, when inverted and supported on its stand can be used as a cooking utensil for heating water, etc.

Q. 56. And when inverted for use as a cooking utensil and supported on its stand, the sole plate becomes the cooking surface? A. It does.

Q. 57. And in such a position, how is the sole plate related to the enclosing shell?

(Deposition of Joseph F. Lamb.)

A. It is above it.

Q. 58. And how is the sole plate supported?

A. By the edge of the shell on its flange. [47]

Q. 59. That is to say, the sole plate is flanged, and this flange rests upon the edge of the shell; is that what you mean? A. Yes.

Q. 60. About when was this Tourists' Iron first marketed and sold? A. September 1914.

(Tourists' Iron produced by witness offered in evidence as Defendant's Exhibit 10—Tourists' Iron.)

Q. 61. What about the handle of this Tourists' Iron?

A. It is removable so that the iron can be inverted to be used as a cooking utensil.

(Witness in testifying as to dates of manufacture and sale of the electrical utensils hereinabove inquired about, has produced certain original books of Landers, Frary & Clark which have been examined by the plaintiff's counsel, and it is stipulated and agreed by and between counsel for the respective parties that the dates of manufacture and sale, and the fact of manufacture and sale of the goods testified above, in substantial quantities, are as testified to by the witness. The books produced by the witness were the order, stock and shipment record of electrical utensils, for the year 1912; record book of the Printing Department for labels and catalogues for the period of April 9, 1912, to November 11, 1912. It is further stipulated and agreed that there has been a general circulation of

(Deposition of Joseph F. Lamb.)

catalogues and display cards and advertisements containing illustrations of the electrical utensils [48] hereinabove testified about by this witness, during the period from April to November, 1912.)

Q. 62. Please look at the patents which I hand you and say whether or not you are the person named as the inventor therein.

A. I am.

(The patents shown the witness are offered in evidence as Defendant's Exhibit 11—Patent No. 1060263; Defendant's Exhibit 12—Patent No. 1060264; Defendant's Exhibit 13—Patent No. 1060265; Defendant's Exhibit 14—Patent No. 1060266; Defendant's Exhibit 15—Patent No. 1060267.)

Q. 63. And you are familiar with the patents and the structures shown therein? A. Yes, sir.

Q. 64. And who are those patents owned by?

A. Landers, Frary & Clark.

Q. 65. And have these various patents any relation to the various electrical utensils Landers, Frary & Clark has made and is making today?

A. They have.

Q. 66. Referring to Defendant's Exhibit 11, Patent No. 1060263, please state whether or not the method of mounting the vessel on the base as illustrated in the drawings is substantially like what Landers, Frary & Clark has used and is using today? A. It is.

Q. 67. And is the same true of the arrangement shown in Figure 4 of Exhibit 12? A. It is.

(Deposition of Joseph F. Lamb.)

Q. 68. And in the drawings of Exhibit 13, Patent No. 1060265? A. It is. [49]

Q. 69. In connection with this Exhibit, particularly in connection with Figures 5 and 6 thereof, please say whether or not the disc stove introduced in evidence as Defendant's Exhibit 8, corresponds to the construction shown in the drawings of this exhibit? A. It does.

Q. 70. And has that construction been regularly used by Landers, Frary & Clark?

A. Yes, but with the addition of the outside shell.

Q. 71. And has this been true for all of the period during which the disc stoves has been made by Landers, Frary & Clark? A. It is.

Q. 72. And in general is the structure of the iron shell in Figures 1, 2, 3 and 4 of this patent the same as has been used by Landers, Frary & Clark?

A. Yes, with a slight modification of the unit.

Q. 73. But the arrangement of the flanged sole plate and the enclosing case has been the same?

A. Exactly the same.

Q. 74. And is it the same as used in the Tourists' Iron, Exhibit 10? A. It is.

Q. 75. As to Exhibits 14 and 15, do they show an arrangement for attaching the vessel to the base, such as has been and is being used by Landers, Frary & Clark? A. They do.

Q. 76. Considering now the complete development of the electrical utensil business of Landers, Frary & Clark, will you please say whether or not they have, in any of the cooking utensils which they have

(Deposition of Joseph F. Lamb.)

manufactured, varied, in any substantial respect, [50] the method of supporting the cooking surface on the base?

(Objected to as calling for a conclusion of the witness.)

A. They have not.

Q. 77. Do you know this from your personal familiarity with the method of construction of the various cooking utensils of Landers, Frary & Clark?

(Same objection.)

A. I do.

Q. 78. And, just briefly, what is this method of construction?

A. The cooking utensil is supported on a sheet metal base.

Q. 79. Will you go into it a little more in detail and describe what the character of this support is?

A. The cooking utensil has a unit attached to the underside and a sheet metal base is then mounted to enclose the unit and to support the cooking utensil.

Q. 80. Then do I understand that the sheet metal base has a surface of one sort or another upon which the cooking utensil rests?

(Objected to as grossly leading, especially as taken in connection with the previous answers of the witness.)

A. It has.

Q. 81. And is this true of the sad-iron and Tourists' Iron when either of them is inverted?

A. It is.

(Deposition of Joseph F. Lamb.)

Q. 82. What is the chafing-dish that I now show you?

A. One that has been manufactured by Landers, Frary & Clark and sold to Mr. A. G. Kimball.

Q. 83. What was the date of that sale? [51]

A. May 10, 1913.

(It is stipulated and agreed by and between counsel that as plaintiff's counsel has examined the book produced by the witness for the establishment of this date of sale of chafing-dish shown to him, it may be taken as proved that the said chafing-dish was sold to A. G. Kimball, then vice-president of Landers, Frary & Clark and now President, on May 10, 1913.) (The chafing-dish as shown witness is offered in evidence as Defendant's Exhibit 16.)

Q. 84. Are some of the electrical utensils made by Landers, Frary & Clark made under the protection of the patents Exhibits 11 to 15, inclusive, which have been shown to you? A. They are.

(Objected to as incompetent and as calling for a conclusion of law.)

Q. 85. Are some of the electrical cooking utensils made by Landers, Frary & Clark marked with the numbers and dates of any or all of the patents Exhibits 11 to 15 inclusive?

(Objected to as immaterial.)

A. They are.

Q. 86. Please say whether or not, in greater part, the business of the manufacturing of electric cooking utensils, as conducted by Landers, Frary &

(Deposition of Joseph F. Lamb.)

Clark, has been done under the protection of patents granted to that company?

(Objected to as calling for a conclusion of law from the witness.)

A. It has.

Recess until 1:30 P. M. [52]

AFTERNOON SESSION—1:30 P. M.

Q. 87. Referring to this chafing-dish, Exhibit 16, and like devices that Landers, Frary & Clark make, for what use is the body member that is mounted on the base, designed? A. For cooking.

Q. 88. That is, cooking is carried on directly in this body part in some cases?

A. In some cases it is; in other cases it is used where one needs water between the unit and the cooking utensil, like cereals and Welsh rarebits and things of that kind.

Q. 89. In that case the water is put in the main body and the material to be cooked in the pan above it?

A. Yes; the lower member is used for scrambling eggs, frying potatoes, and things of that kind.

Q. 90. Will you explain briefly what the device is that is now before you?

A. An electric heated cooking utensil made to illustrate the J. B. Capek patent of March 14, 1893.

Q. 91. And what particular figures of that drawing is represented by this specimen?

A. Figures 1 and 7.

Q. 92. Is it supposed to be anything more than an illustration of the device shown in this patent?

(Deposition of Joseph F. Lamb.)

A. No.

Q. 93. I see that the inner shells are removable from the outer shells. Why was this left so?

A. I left that so so that I could illustrate that by putting any type of cooking utensil into the outer shell it could be used for cooking waffles or things of that kind.

Q. 94. And have you made some waffle-iron members which will [53] fit the outer shells in place of the receptacles shown in the patent?

A. I have.

Q. 95. And was this all done under your direction? A. It was.

Q. 96. And your idea in making this is merely to have it illustrative of the Capek Patent, Figures 1 and 7? A. It was.

(The article shown to the witness, about which he has just testified, is marked for identification No. 17, Capek, illustrative specimen, with waffle-iron adaptation.)

Mr. LYON.—I move to strike out all the testimony of the witness referring to the so-called Capek device, as incompetent, irrelevant and immaterial. Direct examination closed.

Cross-examination by Mr. LYON.

XQ. 97. When was Landers, Frary & Clark organized?

A. I couldn't tell you that. It was a great many years ago.

XQ. 98. How long have you been making electrical appliances like these heaters? A. Since 1912.

(Deposition of Joseph F. Lamb.)

XQ. 99. That was the first that they went into that business? A. Yes, sir.

XQ. 100. And you were one of the primary persons that brought about their entering that business, were you? A. Yes, one of them.

XQ. 101. And it was done under your direction, most of it?

A. I wouldn't say under my direction; under the direction of the president of the concern. [54]

XQ. 102. You were consulted? A. Yes.

XQ. 103. What *let* you to go into the electrical appliance business?

A. Because we were in the alcohol heating lines. We realized that with the great demands for electricity it was very important we should add that to our line, together with alcohol.

XQ. 104. I understand you that the percolator was the first electrically heated device; is that correct? A. Yes.

XQ. 105. And who in your company suggested the manufacture of a percolator for the first time?

A. Mr. Smith, President of the concern at that time, now Chairman of the Board of Directors.

XQ. 106. Did you advise with them concerning that? A. I did.

XQ. 107. And before your conception of the manufacture of a percolator by your company, or the conception of Mr. Smith, or anyone of your company, electrically heated percolators were on the market manufactured by other companies, were they not?

(Deposition of Joseph F. Lamb.)

A. They were. Pardon me, I might answer in this way. There was no concern that I know of that manufactured a complete electric percolator. The electric part of the utensil was manufactured by an electric concern and the utensil itself by a concern that made those utensils. Here is a device where the chafing-dish is made by one manufacturer and the electric stove to which it is attached is made by the Simplex Company. This is an old percolator made by Landers, Frary & Clark and sold to the American Electric Heating [55] Company who added the electric stove. Landers, Frary & Clark I believe were the first ones to make a complete electric percolator.

(The devices produced by the witness are offered in evidence as Defendant's Exhibit 18, Prior Simplex Chafing-dish, and Defendant's Exhibit 19, Prior American Company Percolator.)

XQ. 108. But prior to Landers, Frary & Clark's first manufacture of an *an* electric percolator, there were electric percolators for sale on the market, were there not? A. Yes.

XQ. 109. And by whom?

A. The General Electric, Westinghouse, Simplex, those three.

XQ. 110. And perhaps others? A. Yes.

XQ. 111. Now, the next article that you manufactured, as I understand you, of electrically heated appliances, was the chafing-dish; is that correct?

A. Yes.

XQ. 112. The next in order of production, I mean.

(Deposition of Joseph F. Lamb.)

A. I might say this: this line was developed in, say six months' time, and practically all these articles were put on the market at the same time.

XQ. 113. Now, prior to your company's production of the chafing-dish, chafing-dishes were old on the market, electrically heated?

A. Well, yes—I wouldn't say they were old—there was electrically heated utensils on the market.

XQ. 114. And who were selling those, to your knowledge?

A. The General Electric is the only one that I know of.

XQ. 115. And at about this same period, as I understand you, you brought out a sad-iron?

A. Yes.

XQ. 116. Prior to your bringing out a sad-iron, a great many [56] companies were selling electrically heated sad-irons, were they not?

A. I wouldn't say a great many companies; there were a few.

XQ. 117. Will you name those that you knew?

A. General Electric, Westinghouse, Simplex, and the Hot Point Electric Company.

XQ. 118. Any others?

A. That is all that I remember.

XQ. 119. And prior to your development of an electric heated stove or the production of it by your company, these also were old in the art, were they not?

A. There were others on the market, I can't say how old they were. But, as I said before, there

(Deposition of Joseph F. Lamb.)

were no devices in the percolator line on the market that were enclosed with a base on the bottom in the way we have enclosed this one.

XQ. 120. You manufacture and sell electrically heated waffle-irons, I think you said. Is that correct? A. We do; yes.

XQ. 121. And since when?

A. Since October, 1917. That is the manufacture, as I understand it, not the development.

XQ. 122. Some of these waffle-irons were sold for you by the Pacific States Electric Company, the defendant in this case?

A. I don't know; I couldn't answer that question.

XQ. 123. Have you not been informed that the particular article alleged to infringe the patent in suit in this case in which you are testifying, is an article manufactured by Landers, Frary & Clark?

A. Yes.

XQ. 124. And Landers, Frary & Clark has assumed the defense in [57] this case in which you are testifying, have they not?

(Objected to as immaterial, incompetent and not proper cross-examination.)

XQ. 125. None of the electrically heated appliances manufactured by you prior to the development of your waffle-iron were provided with aluminum cooking surfaces, were they?

A. Yes, they were.

XQ. 126. What ones? A. The percolator.

XQ. 127. And that is all, to your knowledge?

(Deposition of Joseph F. Lamb.)

A. I am not positive about the round grill. I think we have sold some aluminum pans, but I am not positive.

XQ. 128. Otherwise, the cooking surface of these various electrical appliances manufactured by your company have been of sheet metal, haven't they?

A. Not altogether; no. There have been castings.

XQ. 129. Either castings or sheet metal?

A. Yes.

XQ. 130. Now, the waffle-irons manufactured and sold for your company include a pair of casings pivotally connected together, do they not?

A. They do.

XQ. 131. And each of them includes a waffle member provided with aluminum baking surfaces mounted on each of those casings, do they not?

A. They do.

XQ. 132. And those aluminum baking surfaces are so formed that each of them covers the upper edge of their respective casings, do they not?

A. They do.

XQ. 133. And included within your waffle-iron are means mounted in the casings, between the casings and the waffle members, for electrically heating the waffle members; is that correct? [58]

A. Not between, I wouldn't say between. There is an electric unit positioned on the bottom of the waffle-iron, the same as we do with all other appliances.

XQ. 134. The electric heating units are posi-

(Deposition of Joseph F. Lamb.)

tioned between the bottom of the cooking surface and one face of the casings, between which the cooking surface is mounted?

A. It is fastened to the bottom of the waffle-iron.

XQ. 135. Then in your waffle-irons the heating units are placed between the heating surface and one surface of the respective casings; is that correct?

A. There is no space between the unit and the surface; it is fastened right to it. The question would indicate that the unit was placed in between the two. It is not; it is clamped against the heating surfaces the same as in the other electric appliances, just the same as we have done in everything we have made.

XQ. 136. Is there anything between the heating element and one face of the casing? A. There is.

XQ. 137. What?

A. The plate that clamps the unit, just as we do in the stove, the chafing-dish, and everything we make, identical.

XQ. 138. Then as I understand you, your waffle-iron includes a heating element mounted between the casing and the waffle members for heating the waffle members; is that correct?

A. No, it is not. It is attached to the heating surface; there is no space between.

XQ. 139. What do you mean "there is no space between"?

A. Between the unit and the waffle-iron and the casing. There is a space beneath the underside of

(Deposition of Joseph F. Lamb.)

the plate that [59] clamps the electric unit to the waffle-iron.

XQ. 140. Except for this plate, there is nothing between the heating element and the face of the casing below, is there? A. No.

XQ. 141. You mean there is not?

A. There is not.

XQ. 142. Well, then, considering the face of the casing and the waffle member, between those two, there is in your waffle-iron a heating member, is there not?

A. No, there is a heating member between the plate and the waffle-iron. There is a plate to add in between there that clamps. This unit is clamped to the bottom and there is a plate underneath. There is air space below the plate, but not between the unit and the waffle-iron.

XQ. 143. What is the function of this plate?

A. To hold the unit against the cooking surface to be heated.

XQ. 144. That is the only function of the plate?

A. That is the only function.

XQ. 145. Referring to this Capek specimen marked for identification 17, where in the Capek patent referred to by you do you find any suggestion of making the members detachable?

A. My only reason for making them detachable was to illustrate, not for use, it was just to illustrate.

XQ. 146. Then this specimen produced by you is

(Deposition of Joseph F. Lamb.)

not a workable article but is merely for illustration purposes? A. Yes.

XQ. 147. And this specimen has been produced by you with the Wright waffle-iron in view, to show how the Capek [60] device can be adapted to approximate in your opinion the Wright waffle-iron; is that so? A. That is not so.

XQ. 148. With what object in view did you make this specimen?

A. To show that it could be adapted in the same way that Landers, Frary & Clark made their waffle-iron, which was made before we knew there was such a patent as the Wright patent.

Mr. LYON.—I move to strike out the statement “before we knew there was such a patent as the Wright patent” as not responsive.

XQ. 149. Where in the Capek patent is there any suggestion of substituting waffle members such as produced by you for the elements shown in figure 7 of the drawing?

A. A number of things, as well as waffles, that want heating on both sides, and the Capek patent is made for just those different articles that want to be cooked in that way, just the same as a waffle-iron.

XQ. 150. Well, can you show in the Capek patent where the use of waffle members is suggested?

A. Yes, by having the hinge and folding over in the way all waffles are made.

XQ. 151. But there is no other suggestion concerning waffles in the Capek patent, is there, not

(Deposition of Joseph F. Lamb.)

specifically mentioning the waffle members or waffle surface? A. No.

XQ. 152. I notice in this specimen No. 17 you have omitted the portions of the device of Figure 7 of the Capek patent which are numbered 42, 49' and 49 respectively. That is true, is it not?

A. It was not intentional to omit them. They have the [61] same function as the hinges on our own waffle-iron.

Mr. LYON.—I move to strike out the answer as not responsive and I ask that he answer the question yes or no.

Mr. HART.—I instruct the witness that there is no necessity for such an answer, yes or no, if by so doing he is unable to make his meaning clear.

A. As I see the patent it represents a hinge, and we have put on a different type of hinge and it performs the same function as those two members. I can see no difference only it is a different type of hinge.

XQ. 153. Would you, as an officer of Landers, Frary & Clark, advise your company to place on the market for sale, for the purposes of a waffle-iron, devices constructed in accordance with Specimen 17, utilizing the waffle surfaces, also made by you, and included in such specimen?

Objected to as entirely incompetent and immaterial.

Mr. LYON.—And the witness is requested to answer the question "Yes" or "No."

(Deposition of Joseph F. Lamb.)

A. A very efficient waffle-iron could be made in that way.

Mr. LYON.—I move to strike out the answer and I further request that the witness answer the question “Yes” or “No.”

A. Yes, I would.

XQ. 154. Why don't you manufacture them that way instead of the articles you now are selling for waffle-irons?

A. I consider that the two are identical, only one is round and the other is square. There is no real difference in either construction. [62]

XQ. 155. Landers, Frary & Clark have assumed control and have control of the defense of the particular case in which your deposition is now being taken, and Mr. Hart, who has examined you, and Mr. Bartlett, of New York, who is of counsel in the case, are both appearing as your attorneys, are they not? A. They are.

Objected to as immaterial.

Redirect Examination by Mr. HART.

RDQ. 156. In answer to one of the questions asked you on cross-examination you said that Landers, Frary & Clark had begun their work on their waffle-iron before you had any knowledge of the Wright patent.

Objected to as not proper redirect examination and as immaterial.

A. Yes, sir.

RDQ. 157. In the development of your waffle-iron and in the method of arranging the waffle surface

(Deposition of Joseph F. Lamb.)

in respect to the enclosing case, was there anything in your prior practice or experience in building electrical equipment which you were able to use as a guide?

Objected to as incompetent, irrelevant and immaterial.

A. All of the appliances which we have made for cooking utensils have been enclosed in a base, with one or two exceptions, in the same way that we have made the waffle-iron.

Mr. LYON.—Moved to strike out the answer of the witness as a mere conclusion.

RDQ. 158. In cross-examination you were asked if in your waffle-iron the aluminum baking surfaces cover the upper edge of their respective casings. Now, in other and prior [63] cooking utensils which Landers, Frary & Clark made, were there cooking surfaces covering the upper edge, resting on the upper edge of the casing? A. There were.

RDQ. 159. And was that the common method of construction uniformly used by Landers, Frary & Clark?

Objected to as leading.

A. Yes.

RDQ. 160. So that in this respect, when it came to making a waffle-iron, you did not depart from your former methods in the manufacture of other goods?

A. We did not, and we were pioneers in that construction.

Mr. LYON.—Moved to strike out the portion

(Deposition of Joseph F. Lamb.)

stating that they were pioneers in that construction.

RDQ. 161. Do you know of any other manufacturer of electric cooking utensils who, prior to the entry of Landers, Frary & Clark in the field, made their utensils with an enclosing shell or casing, upon the upper edge of which rested the cooking surface?

A. There were some few exceptions, but in percolators, chafing-dishes and things of that kind, those utensils were made by people who made the regular household utensils and the electric stove was attached to the bottom, without a casing. In the original development of our line, we made all of our utensils with a base to enclose the electric stove or heating unit, where the others had left it exposed.

RDQ. 162. And it was on the upper edge of such a base that the cooking surface was mounted, was it? A. It was.

RDQ. 163. Prior to the manufacture of the electrical heating [64] utensils, such as percolators, chafing-dishes, stoves, etc., by Landers, Frary & Clark, I understood you to testify on cross-examination that they made a complete line of such articles heated by alcohol lamps and the like; is that correct? A. It is.

RDQ. 164. So that when they entered this electrical field, they were merely replacing that type of heat producing element with an electrical heat producing element; is that correct?

Objected to as leading.

(Deposition of Joseph F. Lamb.)

A. They did.

RDQ. 165. Please say how your waffle-iron differs from your stove, Exhibits 8 and 9, in respect to that feature of the waffle-iron where the baking surface extends over and rests upon the upper edge of the casing.

Objected to as irrelevant, and that questions of comparison and difference are matters for the Court. The witness can only testify as to the facts.

A. I consider they are practically the same.

RDQ. 166. Was the use of aluminum cooking surfaces known to Landers, Frary & Clark at or prior to the time it started in the manufacture of electrical cooking utensils?

Objected to as irrelevant and immaterial.

A. It was, as a matter of fact. We were making cooking utensils of aluminum at that time.

RDQ. 167. And the characteristics and advantages of aluminum as cooking surfaces were well known to Landers, Frary & Clark at that time.

Same objection. [65]

A. They were.

Cross-examination by Mr. LYON.

RXQ. 168. Prior to the development of your waffle-iron, were you and other officials with whom you advised, familiar with waffle-irons manufactured by the Simplex Electric Heating Company?

A. I can only answer for myself.

RXQ. 169. Were you, personally? A. Yes.

RXQ. 170. Do you consider the Simplex Electric Heating Co. waffle-iron the equal to yours?

(Deposition of Joseph F. Lamb.)

Objected to as incompetent, entirely immaterial and irrelevant.

A. In what way?

RXQ. 171. As a commercial article and one which you would advise the trade to purchase?

Same objection.

A. I do not.

RXQ. 172. For that reason you manufactured your own form of waffle-iron instead of that manufactured by the Simplex Company; is that correct?

A. Not for that reason.

RXQ. 173. Why?

A. We manufactured waffle-irons because it was a natural development of our line. We never considered the Simplex—their iron, at all.

RXQ. 174. You don't consider it in any way comparable in structure or operation to your iron; is that correct?

A. I have never used the Simplex waffle-iron and would not be in a position to give you a fair answer.

RXQ. 175. Do you believe that if presented at the same price, to the same trade, that your waffle-iron will outsell [66] the Simplex waffle-iron?

A. That is not a fair question. It would be impossible to produce the Simplex iron at the same price and it could not be used in the same way.

RXQ. 176. Why not?

A. Because it takes more current than goes on a lamp socket.

RXQ. 177. How about the cost of manufacture of the two, how do they compare?

(Deposition of Joseph F. Lamb.)

A. I couldn't tell you because I have never made a comparison, only I do know this, that it would cost more to manufacture the other.

RXQ. 178. Which do you mean by "the other"?

A. The Simplex.

Deposition closed.

It is stipulated and agreed by and between counsel for the respective parties that the signatures of the witnesses are waived, and that these depositions have been taken stenographically, by agreement.

It is stipulated and agreed by and between the parties hereto that printed patent office copies of patents may be used in lieu of originals and with the same force and effect, subject of course to objection and correction by comparison with the original ones.

It is stipulated by and between the parties hereto that the defendant will produce an aluminum waffle-iron made by the Griswold Manufacturing Co., of Erie, Pennsylvania, such as is illustrated on page 18a of a catalogue of the Griswold Mfg. Co., [67] known as Bulletin No. A-4; and that waffle-irons such as illustrated on the aforesaid page of the identified catalogue and like ones to be produced, have been manufactured and sold in the markets of the United States prior to the earliest date of invention which may be claimed in behalf of the patentee of the patent here in suit.

The catalogue of the Griswold Mfg. Co. is offered

in evidence as Defendant's Exhibit 20, Griswold Catalogue.

The waffle-iron made by the Griswold Mfg. Co. is offered in evidence as Defendant's Exhibit 21, Griswold Aluminum waffle-iron.

[Endorsed]: No. D.-68. U. S. District Court, Southern District of California, Sou. Div. Wm. D. Wright v. Pacific States Elect. Co. Dep. Nelson E. Mann and Joseph F. Lamb. Filed Feb. 3, 1920. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. [68]

Testimony and Proceedings on Trial.

Mr. L. S. LYON.—Yes, we allege that claims 6 to 9, inclusive, are infringed.

Mr. BARTLETT.—If your Honor pleases, I apologize for my making a brief statement. Mr. friend could do it a great deal better, but it happens I have been so long connected with the concern, he thinks I should make a brief statement of our position. So with those apologies, let me just say, without undertaking to make any argument, that the defendant is, as has been said, a large manufacturer of these goods, and has been since 1911 and 1912, this class of goods. The nominal defendant is simply a retailer here in Los Angeles. The real defendant, as appears on the record, is Landers, Frary & Clark, a manufacturer of these goods, from Connecticut. When I speak of the defendant, I

refer to the real defendant, Landers, Frary & Clark.

Mr. L. S. LYON.—We first offer in evidence the original patent in suit, as Plaintiff's Exhibit 1.

(The document so offered and received in evidence was marked Plaintiff's Exhibit No. 1.)

Mr. L. S. LYON.—And we offer in evidence the infringing device, and ask that it be marked Plaintiff's Exhibit 2. Mr. Bartlett, we would like to offer this in evidence, and will you stipulate that it was manufactured by Landers, [69] Frary & Clark subsequent to the issuance of the patent in suit, and sold by the defendant in this case prior to the institution of this suit, and subsequent to the issuance of the patent in suit?

Mr. BARTLETT.—Yes.

Mr. L. S. LYON.—And, unless an injunction is issued, you intend that this device shall be continuously sold?

Mr. BARTLETT.—Yes.

Mr. L. S. LYON.—We offer that in evidence as Plaintiff's Exhibit 2.

(The device so offered and received in evidence was marked Plaintiff's Exhibit 2.)

Mr. L. S. LYON.—I desire to offer in evidence a letter under date of December 17, 1917, to Landers, Frary & Clark, and an annexed circular, which is our written notice to Landers, Frary & Clark of the issuance of the Wright patent. Will you admit that you received the letter, or do you want me to call the writer, or will you admit that the defendant had notice of the Wright patent?

Mr. BARTLETT.—Yes.

Mr. L. S. LYON.—Which would be the equivalent.

Mr. BARTLETT.—Yes; and I presume this letter is all right, although I never have seen it. You don't need it. We admit notice.

Mr L. S. LYON.—Well, you admit notice?

Mr. BARTLETT.—We admit notice, yes. [70]

Mr. L. S. LYON.—Prior to the institution of this suit, you had notice of the patent.

Mr. BARTLETT.—Yes.

Mr. L. S. LYON.—Mr. Wright, take the stand, please. [71]

Testimony of William D. Wright, in His Own Behalf.

WILLIAM D. WRIGHT, the plaintiff herein, called as a witness on his own behalf, being first duly sworn, testified as follows:

Direct Examination by Mr. L. S. LYON.

Q. You are the plaintiff in this suit, Mr. Wright?

A. Yes, sir.

Q. And you are the William D. Wright to whom the letters patent in suit were issued?

A. Yes, sir.

Q. Prior to February 5, 1916, in what business were you engaged?

A. I was a floor manager for Alfred Stahl & Sons, in San Diego.

Q. What business is Alfred Stahl & Sons engaged in?

A. In the business of selling house furnishings, such as used in the kitchen and dining-room; queens-ware and metal goods.

Q. When did you first become interested in elec-

(Testimony of William D. Wright.)

trical waffle-irons? A. In October, 1915.

Q. Will you state the circumstances?

A. I was working with an electric broiler at the time, and other electric devices, and also working with a gas waffle-iron in a cabinet form, where the gas waffle-iron was suspended from a carrier, so the gas blaze would strike [72] on both sides of the iron at the same time; and in working with that, the suggestion came to me, upon laying this down, this aluminum plate down upon an element I was working with, of applying electricity to the waffle-iron.

Q. When you say you were working with these things, what do you mean by you were working?

A. I had developed the broiler at that time, and also another device.

Q. In other words, you were getting them up yourself? A. Yes, sir.

Q. Well, what was the next thing you did with the electric waffle-irons?

A. I finished the electric waffle-iron and sold it to the man who owned the gas iron I was working with, a Mr. Quince C. Crane, and he being in the restaurant business saw the possibilities of the iron and wanted to know the chances of becoming associated with me in the manufacture and sale of this iron.

Mr. BLAKESLEE.—We move to strike out the answer, on the ground it states a conclusion, not a statement of fact, in that he states he finished

(Testimony of William D. Wright.)

something. We think he should specify what he did, if anything.

Mr. L. S. LYON.—That is preliminary, Mr. Blakeslee.

The COURT.—I will strike out that part of the answer in regard to that, and that he saw the possibilities of it.

Q. (By Mr. L. S. LYON.) Explain what you completed at that [73] time.

A. I completed an electric grill, that we call a broiler; also I completed an electric waffle-iron.

Mr. BLAKESLEE.—We make the same motion, your Honor. We think he should be asked what he did.

The COURT.— I will overrule the motion.

Q. (By Mr. L. S. LYON.) Will you explain in detail the construction of what you have mentioned?

A. The first article I completed was a supporting stand, holding hollowed aluminum tubing, in which I invented electrical elements so the heat would be conveyed from the element to the food cooking through the aluminum tubing. That was connected, the electrical element, was connected by wires, so that it could be attached to an ordinary lighting circuit. Then I completed a pair of metal casings, with a hinge, and in that casing I installed an electrical element next to the aluminum surface, so that the heat from the element could be conveyed to the food I wished to bake in a waffle-iron.

Q. Where is that original device, if you know?

A. The original device is the large square one on the table here.

(Testimony of William D. Wright.)

Q. Is this the device you refer to (indicating)?

A. Yes, sir.

Q. When was this completed?

A. That iron was completed either in the last of October, [74] the last week, or the first week in November, 1915.

Mr. L. S. LYON.—The device is offered in evidence as Plaintiff's Exhibit 3.

(The device so offered and received in evidence was marked Plaintiff's Exhibit 3.)

Q. Will you explain this to the Court, please?

Mr. BLAKESLEE.—We object to the offer, your Honor, on the ground it has not been completely identified, and that it is immaterial and irrelevant, as it has nothing to do with the invention of the patent in suit. It is not the structure of the patent in suit, and obviously not in exemplification of any claim in the patent in suit.

The COURT.—I will overrule the motion.

Mr. BLAKESLEE.—Exception.

A. The aluminum plate I used was the aluminum plate taken from the element or from the gas iron that I had been working with. This carrier ran up here a little bit further, and had a flange on it, so it could slide in the carrier of the gas iron oven. I sawed that off, built my box to conform to the sawed-down aluminum plate. Then I used the electrical element that I had developed for a previous article, applied that to the base of this, using isinglass as a nonconductor between the two, and then as a supporting base underneath that I laid

(Testimony of William D. Wright.)

a sheet of what we know as board asbestos, holding that in position by strips of the board asbestos. The asbestos used in [75] this iron now has been replaced once, I believe, from that time, because of the heat having a tendency to dry that. Outside of that—and also, since that date, I have added one pair of bifurcated tubings. The first iron I completed had just one pair. I added that since that, for the reason that the two wires in one tubing, becoming heated and charred from the heat of the iron, had a tendency to short in there. Outside of this addition, and the asbestos plate inside of this, this iron is identically the iron built and put in use in November, probably the last week in October or the first week in November, 1915.

Q. (By Mr. L. S. LYON.) When you say “put in use,” will you describe what you mean by that? What did you do with the iron, Mr. Wright?

A. The iron was given to Mr. Quince Crane, and in turn Mr.—

The COURT.—Is this date of invention involved in this case?

Mr. L. S. LYON.—Well, we want to prove the operation of the devices, that they will actually operate, your Honor. I think we are entitled to do that, as having some bearing on the patent.

Mr. BLAKESLEE.—If that is the ground of the proof, or the reason, we object as entirely irrelevant and immaterial, as this does not contain the structure of the patent in suit. [76]

The COURT.—Well, they can put this in evi-

(Testimony of William D. Wright.)

dence. I don't think it is necessary, but I will take this witness' testimony about it.

Mr. BLAKESLEE.—I cannot see that it is material at all.

The COURT.—What he did before he got his patent is of no consequence, it seems to me.

Mr. L. S. LYON.—All we want to show is—

The COURT.—Unless the date of invention is involved.

Mr. L. S. LYON.—We want to show the things will work, your Honor.

The COURT.—Sir?

Mr. L. S. LYON.—We want to show they will work.

The COURT.—Well, that is all right, but that is not what you are doing. You are talking about how he came to invent this thing, and how he invented it, and what it was.

Q. (By Mr. L. S. LYON.) What was done with that iron?

A. This iron was given to Mr. Quince C. Crane, and he, not keeping house at that time, gave it to the possession of his brother, Mr. Will Crane, who was keeping house, and Mrs. Will Crane has had it in her possession since.

Q. Do you know whether it has ever been used for cooking at all? A. Yes, sir.

Mr. BLAKESLEE.—The same objection, entirely immaterial and irrelevant.

The COURT.—I will overrule that objection.
[77]

(Testimony of William D. Wright.)

A. Yes, sir.

The COURT.—Has it been used in cooking?

A. Yes, sir; it has been in continuous use since that date.

Q. (By Mr. L. S. LYON.) For cooking waffles?

A. Yes, sir.

Q. And it has worked satisfactorily, has it?

A. Yes, sir.

Q. What is the next step you did with your invention, towards getting your patent, Mr. Wright?

Mr. BLAKESLEE.—We object to that.

Mr. L. S. LYON.—We are coming right down to the patent, your Honor.

Mr. BLAKESLEE.—We object to that as entirely irrelevant and immaterial at this time. If there is anything to be proved about the date of the invention, that should be a matter of rebuttal.

The COURT.—Is the date of invention involved here?

Mr. BLAKESLEE.—We have taken depositions, and have in evidence exhibits showing early devices, yes, which we contend are the same thing.

The COURT.—Well, do you want to go into that issue now?

Mr. F. S. LYON.—That is not the issue, your Honor. They have indicated in their opening statement the contention that this device, as a waffle-iron, *per se*, without a grill, was not what Mr. Wright asked or sought a patent [78] on, nor the invention he had.

The COURT.—That is not what you are trying

(Testimony of William D. Wright.)

to prove now. You have got that in, when he got it, and that he made it.

Mr. F. S. LYON.—The only object is to show the making of other waffle-irons by him; that is all we want to do at this time.

Q. (By Mr. L. S. LYON.) Well, to corroborate your testimony, that you actually made this, Mr. Wright, have you any record that shows, or any drawing of any kind, that shows the construction of this waffle-iron, made at a time prior to the application for your patent?

A. At the time that our search was made in Washington, I took the wrapping of this iron that I had taken up to the attorney, with the grill, and drew a rough sketch on that, so that our attorney could send that on to Washington to complete the search, to have something to give him a clue to what he was looking for.

Q. I show you a carbon copy of a letter, and a carbon duplicate of a letter, with a drawing attached. Is that the letter and drawing that you referred to?

Mr. BLAKESLEE.—We further object, your Honor, that it is an attempt somehow by evidence to construe the patent in suit. Now, that is not the proper procedure. The patent speaks for itself, and the fact this witness had some other thing which is not shown or claimed to be [79] patented cannot be material or relevant to this issue.

The COURT.—I will overrule the objection.

Mr. BLAKESLEE.—Exception.

(Testimony of William D. Wright.)

A. This is a copy of the letter and the drawings that I sent east, or that our attorney sent east at that time.

Mr. L. S. LYON.—This is offered in evidence.

The CLERK.—Plaintiff's Exhibit No. 4 filed.

(The document so offered and received in evidence was marked Plaintiff's Exhibit No. 4.)

Q. (By Mr. L. S. LYON.) Had you, prior to the time your patent application was filed, constructed any other device that embodied a waffle-iron?

Mr. BLAKESLEE.—The same objection.

The COURT.—Overruled.

Mr. BLAKESLEE.—Exception.

A. I did not get the exact question, Mr. Lyon?

The COURT.—Read it, Mr Reporter.

(Question read.)

A. I had, yes, sir.

Q. (By Mr. L. S. LYON.) Will you describe that device?

Mr. BLAKESLEE.—Can it be produced here?

Mr. L. S. LYON.—I will let him describe it first.

A. The thought occurred to me at the time also of a combination holding device that could be used for several purposes, and having the broiler and a waffle-iron, and I combined two together, to make a third device, that [80] could be used for general cooking purposes.

Q. Have you that device, Mr. Wright?

A. Not the first device I built, Mr. Lyon. This device I have here was built in January. My first device was built in December.

(Testimony of William D. Wright.)

Q. January of what year? A. January, 1916.

Q. I suppose they were substantially the same?

A. Substantially the same; yes, sir.

Q. For the purpose of identification, is this the device referred to by you, made in January, 1916 (indicating)?

A. That is the device, with one or two exceptions, Mr. Lyon. I have added since that date a box containing just two switches, in place of three switches, and some of the screws in there—I had taken this particular arrangement apart and was using it just as a waffle-iron in my own home, and I have reassembled that for this case. That is substantially the same iron, with the exception of a few screws used, where it was riveted together, that I built at that time.

Mr. L. S. LYON.—The device is offered in evidence as Plaintiff's Exhibit—

The CLERK.—Plaintiff's Exhibit No. 5.

Mr. BLAKESLEE.—We object to that as fragmentary, and not proper proof.

The COURT.—Overruled. [81]

Mr. BLAKESLEE.—Exception.

(The device so offered and received in evidence was marked Plaintiff's Exhibit No. 5.)

Q. (By Mr. L. S. LYON.) Was this device, Plaintiff's Exhibit 5, or its duplicate that you made before, ever actually used?

A. Yes, sir.

Q. Was it used for waffles?

A. It was used for waffles, yes, sir.

(Testimony of William D. Wright.)

Q. Used for anything else?

A. It was used for grilling bacon; it was used for toasting; and it has been used for heating a percolator.

Q. Did it operate successfully?

A. Reasonably successfully; yes, sir.

Mr. BLAKESLEE.—We object to that as calling for a conclusion, your Honor.

The COURT.—Well, I think it is a conclusion, but I presume the inventor has a right to express a conclusion and give his opinion. That is all it amounts to.

Q. (By Mr. L. S. LYON.) Was the bacon cooked?

A. It baked the waffle; it grilled the bacon; and it heated the percolator.

Q. Did you make any other devices at any time like this, Plaintiff's Exhibit 3?

A. Owing to the fact that this larger iron drew more heat and more current than the ordinary house wiring would carry, [82] and to the fact that this baked two waffles at one time, in December, 1915, I constructed a single waffle-iron.

Q. Have you that waffle-iron, Mr. Wright?

A. That is the one that is cross-sectioned here, Mr. Lyon.

Mr. L. S. LYON.—That is offered in evidence as Plaintiff's Exhibit—

The CLERK.—Plaintiff's Exhibit No. 6.

Mr. BLAKESLEE.—We object to that on the same grounds,—entirely irrelevant and immaterial,

(Testimony of William D. Wright.)

and on the ground it does not embody the structure and the matter claimed in the patent in suit.

The COURT.—They claim it does. I will overrule the objection.

Mr. BLAKESLEE.—Exception.

(The device so offered and received in evidence was marked Plaintiff's Exhibit No. 6.)

Q. (By Mr. L. S. LYON.) Was this waffle-iron ever used, Mr. Wright?

A. Yes.

Q. This last one? A. Yes.

Q. Will you state the circumstances of its use?

A. When it was used?

Q. Yes, and what it was used on, and how it worked.

A. Mr. Crane used this iron in demonstrating to [83] prospective customers. It was taken into an apartment house in San Diego by a Mr. Jones, the President of the San Diego Gas Company, and used by him in the apartment house to demonstrate to other parties; and it has been used continuously by several people since then.

Q. What is this bill, if you know, Mr. Wright (showing paper to witness)?

A. This is a bill covering six more pair of casings, similar to this one here (indicating).

Q. Which one? A. The large one.

Q. This one (indicating)?

A. Six more pair of castings.

Q. Exhibit No. 3?

A. The same as Exhibit No. 3, that I had built

(Testimony of William D. Wright.)

by the Ingle Manufacturing Company for me.

Mr. L. S. LYON.—The bill is offered in evidence as Plaintiff's Exhibit—

The CLERK.—Plaintiff's Exhibit 7.

Mr. BLAKESLEE.—The same objection as before.

The COURT.—Overruled.

Mr. BLAKESLEE.—Exception.

(The document so offered and received in evidence was marked Plaintiff's Exhibit 7.)

Q. (By Mr. L. S. LYON.) Do you know what this is, Mr. Wright (showing object to witness)?

[84]

A. That is the commercial form of iron that we expected to make.

Q. When was this iron made, that I have in my hand?

A. In January, 1915, with the exception of the brass plate on there; that has been added since.

Q. What year? A. 1916.

Q. And was this iron shown to your patent attorney at the time you prepared your patent application?

A. No, the larger iron—yes, I will take it back. The three irons were shown to the patent attorney, this iron, the single unit, and this one.

Mr. BLAKESLEE.—Objected to as entirely immaterial and irrelevant, that it was shown to his patent attorney. The patent speaks for itself.

The COURT.—Objection overruled.

Mr. BLAKESLEE.—Exception.

(Testimony of William D. Wright.)

Mr. L. S. LYON.—This iron, which is the last one, is offered in evidence as Plaintiff's Exhibit No. 8.

(The device so offered and received in evidence was marked Plaintiff's Exhibit No. 8.)

Q. (By Mr. L. S. LYON.) This Exhibit No. 8 is the one you referred to as making in January, 1916?

A. Yes, sir.

Q. Now, the three irons you showed to your patent attorney, the three waffle-irons, are Exhibit No. 8, Exhibit [85] No. 3, and Exhibit No. 5; is that correct? A. Yes, sir.

Q. Now, will you state to the Court the circumstances surrounding the making of your drawing, the reason for the drawing being made the way it is, the drawing in your patent?

A. The attorney, the patent attorney that I went to first, said that he could draw the patent paper so that the one patent, or the one application fee, could cover both devices, not necessitating an application for each device in itself.

Mr. BLAKESLEE.—We move to strike that out as entirely irrelevant and immaterial, and the testimony is incompetent also. The patent must speak for itself, and any *ex parte* statement of the attorney to his client cannot be of any probative force.

The COURT.—I think the objection is well made.

Mr. L. S. LYON.—We do not expect that this can prove the construction of the patent, or its terms; but the contention can be made, and doubt-

(Testimony of William D. Wright.)

less will be made, by defendant, if we do not have evidence to the contrary, that this is an afterthought of ours. We want to show that these claims which are in the patent, and not connected with the grill member, were purposely put in to cover this particular form of device, and that was the intention of the parties, and that we are not trying to [86] take these claims and use them to cover something we had not actually invented prior to the time the application was filed.

Mr. BLAKESLEE.—Such proof would be incompetent. The patent must be construed by the Court in view of the prior art, and the file-wrapper and contents, and not by anything that was a mere naked intention of the patentee or his attorney.

The COURT.—That is not what he makes, a naked contention, but he is proving here a communication that he had between himself and his attorney. I do not see how an opinion of his attorney is relevant.

Mr. BLAKESLEE.—That is *ex parte* entirely.

Mr. L. S. LYON.—I am merely using that to corroborate what his actual intention was in signing the papers. Of course, we have a right to show what the ideas of the man were, that wrote that language, to show what he meant by it, it seems to me.

The COURT.—If it is ambiguous. If it is not ambiguous, why?

Mr. L. S. LYON.—How can we decide now

(Testimony of William D. Wright.)

whether it is ambiguous or not, until we come to the argument?

The COURT.—I don't know whether it is or not.

Mr. L. S. LYON.—I don't know either. I claim it is not. I would like to put in the evidence, so that if they claim it is, then it will show what they meant by [87] it.

Mr. BLAKESLEE.—He cannot bring in a lot of things he might have covered by other applications for patent, and say these things are to be covered by this application in suit.

The COURT.—I will sustain the objection.

Mr. L. S. LYON.—Exception.

Q. Mr. Wright, what did you desire to protect or cover in this application; what devices or device did you have in mind covering?

Mr. BLAKESLEE.—Now, that is the same thing, your Honor. His desire cannot be evidence.

The COURT.—The objection will be sustained.

Mr. L. S. LYON.—I thought your Honor ruled on the ground we were asking for an opinion of the attorney, and what the attorney said. We would like to prove Mr. Wright's actual intent when he signed these papers.

Mr. BLAKESLEE.—That is even further afield. Desire is not evidence of a fact.

The COURT.—Never mind, Mr. Blakeslee.

Mr. L. S. LYON.—Do I understand the Court ruled?

The COURT.—I sustained the objection.

(Testimony of William D. Wright.)

Mr. L. S. LYON.—Well, I *don't* to repeat questions in different forms. Do I understand the Court has ruled we cannot—

The COURT.—Your application will show what he did. [88] Now, if there is any ambiguity about it, and if it is not illustrated by these devices, then you can produce evidence to explain the ambiguity, if it is a latent ambiguity. If there is no ambiguity about it, we don't need any evidence.

Mr. L. S. LYON.—I didn't hear the last.

The COURT.—I say, if there is no ambiguity about it, we don't need any evidence of what the man intended by what he did. The application for the patent will speak for itself.

Mr. L. S. LYON.—May I ask when we are going to decide whether there is any ambiguity about it?

The COURT.—Decide that for yourself. If it is *ambiguout*, why, say so.

Mr. L. S. LYON.—Well, the defendant has claimed that it is. We claim it is not.

Mr. BLAKESLEE.—We make no such contention, if your Honor please. We simply state that the meaning is clear and plain, and the claims are to be construed as usual, in the light of specifications and drawings, and there is no ambiguity, and there is no necessity for attempt—and there should be no permission to attempt to broaden out this narrow claim.

The COURT.—Proceed, Mr. Lyon.

Mr. L. S. LYON.—Well, we will take an exception.

(Testimony of William D. Wright.)

The COURT.—All right. [89]

Q. (By Mr. L. S. LYON.) After you filed your application, Mr. Wright, did you make any arrangements for the manufacture of this device, or have any plans for the manufacture of this device?

A. Mr. Crane formed a corporation under the state laws of California, with the view of placing the waffle-iron on the market.

Q. And who was connected with that corporation?

A. Mr. Quince Crane, Mr. O. E. Marks, and myself.

Q. And how far did you proceed with your plans for placing the articles on the market?

A. We had secured a ground site for a building, made arrangements with the foundry for the building of the waffle-iron, for the casting of the aluminum waffle-mold, and because of giving him the contract for that, he had agreed to furnish us with power from his plant. We had made arrangements, or were making arrangements, for the metals, and had ordered some of the material, and were expecting to start along about the last of October or the first of November, 1917—1916, I should say.

Q. Who was putting the money,—who were planning to put the money into this company?

A. There were several men in San Diego. Mr. Quince Crane, Mr. Will Crane, a Mr. Sinclair, a Mr. Hills, and another party,—I cannot call his name just now.

(Testimony of William D. Wright.)

Q. Was Mr. Quince Crane the principal backer of the concern? [90] A. Yes, sir.

Q. What became of that project?

A. Mr. Quince Crane was the manager at that time of the Hotel Cecil. He resigned his position as manager of the Hotel Cecil, after we had ordered some of the materials, and took a two-weeks' trip up to Powatan Lodge, in the mountains back of San Diego, prior to the actual starting of the corporation plans, or the actual putting into operation of the corporation plans. He left on Sunday morning, and died on the following Thursday.

Q. And that made impossible the carrying out of those plans and this project?

A. At that time; yes, sir.

Q. What was the next idea you had, if any, along the idea of exploiting this iron commercially?

A. After his estate was settled, we expected to start out—his two brothers, Mr. Will Crane and Mr. Albert S. Crane taking his position, and they stood ready to complete the arrangement.

Q. Has anything held up that latest project?

A. The time we were getting things working around into shape, where we were able to start again, Landers, Frary & Clark came on the market with a device identically representing my idea.

Q. And after that you started your suit, and held up [91] your plans, did you?

A. Before I could have have them go ahead, or interest them to go ahead, it was necessary to clear up the question of the rights about the patent.

(Testimony of William D. Wright.)

Q. And what are your plans for the future for this patent, just briefly?

A. The two Mr. Cranes stand ready—I have a contract with them, and they stand ready to go ahead with the plans outlined by their brother.

Q. In what event?

A. In the manufacture and sale of the iron.

Q. In what event?

Mr. BLAKESLEE.—We object to that as entirely immaterial, self-serving declaration, and not probative.

The COURT.—I think so. The objection will be sustained.

Mr. BLAKESLEE.—The whole line.

Mr. L. S. LYON.—I offer in evidence an assignment recorded in the Patent Office from William D. Wright to Quince C. Crane, in accordance with the pleading of the bill of complaint; a second assignment from William D. Wright and Quince C. Crane to Crane & Wright Electric Company, a corporation duly organized, and so forth; and a third assignment from William D. Wright and Ovid E. Marks, as the surviving directors and trustees of a corporation that has lapsed for a failure to pay the corporate license fee under the laws of the State of California,—from the corporation, [92] they acting as the corporation, to William D. Wright. Is there any objection to these papers?

Mr. BLAKESLEE.—I wish to reserve the objection that they are not complete; fragmentary; and the proof is not made out on the face of them as

(Testimony of William D. Wright.)

to any purported transfer of the alleged trustees of this defunct corporation.

Mr. L. S. LYON.—Well, we won't consent to any reservation of any objections. I understood from Mr. Bartlett that they would make any objections they wanted at this time, or else—

Mr. BLAKESLEE.—Well, I am making objections now. It is not complete proof, not a proper method of proof, and they are incomplete and fragmentary.

The COURT.—What is lacking in the proof?

Mr. BLAKESLEE.—I don't think this purported transfer from the trustees of this corporation is properly proven. I don't think they can come and say that two individuals, acting as trustees, conveyed this interest. I don't think that is complete proof. I think there should be further proof to show how they were authorized. And furthermore, the signatures of the alleged grantors are not acknowledged.

Mr. F. S. LYON.—Well, that is true. We can ask the witness in regard to the signatures, but do you want us to take the trouble to go to the corporate books and prove failure to pay the State tax, and so forth?

The COURT.—Is there a certificate of the Secretary of [93] State showing the dissolution?

Mr. F. S. LYON.—There has been no dissolution. The right to do business, and the right to corporate existence was forfeited by failure to pay the annual renewal fees.

(Testimony of William D. Wright.)

The COURT.—Have you a certificate to that effect?

Mr. F. S. LYON.—I have no certificate to that effect, but we will prove it by the witness, who was one of the Board of Directors.

Mr. BLAKESLEE.—We do not wish to be captious, your Honor, but our position, of course, is, if title is not made out, and plaintiff should prevail, there might be a recovery by the wrong plaintiff, and we would have to go through the whole procedure again with the right one.

The COURT.—I don't think your objection is well taken, because what they have offered is part of the proof, whether it is complete or not.

Mr. BLAKESLEE.—It seems to me there should be proof of the defunct condition of the corporation.

The COURT.—That might be so, but this proof here is relevant to that issue. I will overrule the objection.

Mr. BLAKESLEE.—Exception.

Mr. L. S. LYON.—We offer in evidence, then, the duly acknowledged and recorded assignment from Wright to Quince C. Crane, as Plaintiff's Exhibit—

The CLERK.—Plaintiff's Exhibit No. 9.

(The document so offered and received in evidence was [94] marked Plaintiff's Exhibit No. 9.)

Mr. L. S. LYON.—And we offer in evidence—

The COURT.—I don't understand why you do

(Testimony of William D. Wright.)

that. This patent was issued to Wright, wasn't it?

Mr. L. S. LYON.—We have pleaded in the bill of complaint that after it was issued it was assigned.

The COURT.—What did you do that for?

Mr. L. S. LYON.—Because we wanted to show the real title. Of course, we could have stood on our *prima facie* title, but we felt we should show the actual chain of title.

The COURT.—Well, proceed.

Mr. L. S. LYON.—And we offer in evidence the acknowledged and recorded assignment from Wright and Quince C. Crane to the Crane & Wright Electric Company, a corporation.

The CLERK.—Plaintiff's Exhibit No. 10.

(The document so offered and received in evidence was marked Plaintiff's Exhibit No. 10.)

Q. (By Mr. L. S. LYON.) Mr. Wright, who were the—

Mr. BLAKESLEE.—I wish to bring that under the same objections, please.

The COURT.—The objections will be overruled.

Mr. BLAKESLEE.—Exception.

Q. (By Mr. L. S. LYON.) I show you a paper entitled, "Assignment." Have you ever seen that before (showing paper to witness)?

A. Yes, sir. [95]

Q. And is that your signature on the paper?

A. Yes, sir.

Q. And do you recognize the other signature?

A. Yes, sir.

Q. Can you identify that? A. Yes, sir.

(Testimony of William D. Wright.)

Q. Whose signature is that?

A. That is Mr. Ovid E. Marks, the third director of our corporation.

Q. Who was the other director?

A. Mr. Quince Crane, deceased.

Q. And were you and Mr. Crane and Mr. Wright—I mean, yourself and Mr. Crane and Mr. Marks, the sole directors of this corporation during its existence? A. Yes, sir.

Q. And what became of that corporation?

A. Owing to the estate of Quince C. Crane not paying the corporation tax, the corporation became extinct.

Q. And you and Mr. Marks, as the surviving directors of that corporation, made this assignment?

A. Yes, sir.

Mr. BLAKESLEE.—We object to that as not a proper method of proof, and calling for a conclusion of law by the witness.

The COURT.—Why?

Mr. BLAKESLEE.—I don't think the witness is competent to [96] testify that because of the defunct condition of that corporation, as trustees they did so-and-so. It seems to me that is stating a conclusion.

The COURT.—I think that is a statement of a conclusion. You and the other trustees signed that? A. Yes, sir.

Mr. BLAKESLEE.—I think that is as far as the inquiry—

The COURT.—And this assignment, this docu-

(Testimony of William D. Wright.)

ment, runs to you? A. Yes, sir.

The COURT.—That raises a question as to whether a man who is a trustee can make an assignment of a document to himself.

Q. (By Mr. L. S. LYON.) What was the purpose of this assignment, Mr. Wright?

Mr. BLAKESLEE.—I object to that.

The COURT.—The assignment will show for itself.

Mr. L. S. LYON.—Well, you bring up the question that a trustee cannot assign to himself. He can, under certain circumstances, where the corporation was holding a patent, as long as it operated in conformity with the contract; and when Mr. Quince Crane died, and the corporation was ready to lapse, under the agreement the corporation returned the patent to Mr. Wright.

The COURT.—Is that agreement put in evidence?

Mr. L. S. LYON.—The agreement states they will do it. [97]

The COURT.—Have you filed this document signed by those people?

Mr. L. S. LYON.—We offer in evidence the assignment.

The COURT.—Well, that will go in evidence, but whether good or bad, I don't know.

Mr. BLAKESLEE.—We object, on the ground no foundation is laid, and not a proper method of proof.

The COURT.—I will overrule the objection.

(Testimony of William D. Wright.)

Mr. L. S. LYON.—We offer in evidence the assignment from Wright and Marks to William D. Wright, as Plaintiff's Exhibit—

The CLERK.—Plaintiff's Exhibit No. 11.

Mr. BLAKESLEE.—We wish to reserve, please, the further objection that the witness is not competent to identify the paper.

The COURT.—All right. Objection overruled.

Mr. BLAKESLEE.—Exception.

(The document so offered and received in evidence was marked Plaintiff's Exhibit No. 11.)

Q. (By Mr. L. S. LYON.) Mr. Wright, was there anybody else financially interested in the company at the time of this transfer? A. No, sir.

Q. Besides yourself and Mr. Marks?

A. No, sir.

Q. You had purchased all of the stock owned by anybody [98] else, by Quince Crane, or all his rights in the company, have you not?

A. Yes, sir.

The COURT.—I am not familiar with the law that authorizes trustees—unless there is some declaration of forfeiture by the Secretary of State, I did not suppose the directors became trustees, unless there was some declaration of forfeiture.

Mr. F. S. LYON.—We will present that statute later, your Honor.

The COURT.—All right.

Mr. F. S. LYON.—I am well satisfied myself that the statute provides that if the tax is not paid,

(Testimony of William D. Wright.)

the corporation may do nothing except to wind up its business. I will look it up, though.

Mr. L. S. LYON.—Referring to Plaintiff's Exhibit No. 2, the defendant's device, will you point out to the Court, in such a device, the pair of casings pivotally connected together?

Mr. BLAKESLEE.—Now, is that the defendant's structure?

The COURT.—Yes.

Mr. BLAKESLEE.—We object, on the ground that this is mere idle procedure; that the witness is not needed to apply the claims of the patent to the device; and that it really is an attempt to usurp the function of the Court, and calls for an opinion on the part of the witness. He [99] is obviously taking fragments of the claims and having the witness paste them on parts of the device.

The COURT.—Will you read the question?

(Question read.)

The COURT.—I overrule the objection.

Mr. BLAKESLEE.—Exception.

A. This is the pair of casings pivotally connected together (indicating).

Q. (By Mr. L. S. LYON.) And what is the object in a waffle-iron of that character of pivotally connecting the casings together, Mr. Wright?

A. So that in the rotation of the leaf, the opposite members form a box-shaped arrangement, that will take pastry in what we call a waffle.

Q. In other words, to bring the top member in a proper superimposed relation on the bottom at

(Testimony of William D. Wright.)

such time as the waffle is being baked, to permit its being turned at such time as you want to fill or remove the waffle; is that correct? A. Yes, sir.

Q. And this defendant's device is so constructed that it performs that function, is that correct?

A. Yes, sir.

Mr. BLAKESLEE.—We object further, that this is an attempt to put the patentee on the stand and apply his own patent to the defendant's device, and I don't think it is [100] a proper method of proof. I think if the claims mean anything, they should be capable of application to our alleged infringement. I cannot see where the say-so of the patentee can be probative in any respect. It is against the rules of evidence as to experts. I presume now he is acting as an expert,

The COURT.—Well, I suppose he is acting as an expert. That is the only way the evidence should be got in. I would just as soon have Mr. Lyon's statement as his witness' about it, as far as that is concerned.

Mr. BLAKESLEE.—I think counsel should make those statements, and not the witness. It is against the procedure with experts, and Courts are against allowing witnesses to state fragments of claims and apply them.

The COURT.—Objection overruled.

Mr. BLAKESLEE.—Exception.

Mr. L. S. LYON.—If you are not going to use any expert testimony of that kind, we are willing not to.

(Testimony of William D. Wright.)

Mr. BLAKESLEE.—We are not going to use any expert testimony.

Mr. F. S. LYON.—No expert testimony in the case?

Mr. BLAKESLEE.—We will probably have a witness testify to certain structures here in the prior art, but we are not going to have the presumption to have an expert tell the Court what our device is with relation to the claims of the patent.
[101]

Mr. L. S. LYON.—We were simply bringing out on this particular device that it performs a certain function.

The COURT.—Well, proceed.

Q. (By Mr. L. S. LYON.) Will you describe to the Court what was in those casings, Mr. Wright?

The COURT.—In these?

Mr. L. S. LYON.—Yes.

The COURT.—Haven't you done that?

Mr. L. S. LYON.—I am not sure that that is evidence which we can quote.

The COURT.—All right; proceed.

A. The casing contains an electrical element and nonconducting element, with an aluminum waffle casing adjacent to the casing; the edge of the waffle member is flanged over the edge of the casing.

Q. (By Mr. L. S. LYON.) Where is the non-conducting element?

Mr. BLAKESLEE.—May our objection, your Honor, stand to this whole line?

(Testimony of William D. Wright.)

The COURT.—All right.

Mr. BLAKESLEE.—And furthermore, we wish to add the objection, for the purpose of the record, that the oral testimony of the witness is not the best evidence. The best evidence is the thing itself which he is describing.

The COURT.—Well, I think undoubtedly the best evidence is the thing itself. I have got eyes, and can see the thing. [102]

Q. (By Mr. L. S. LYON.) Well, will you describe what is the purpose or the function performed by the flange, the aluminum flange, on the baking members of that exhibit, Mr. Wright?

Mr. BLAKESLEE.—The same objection.

The COURT.—Overruled.

Mr. BLAKESLEE.—Exception.

The COURT.—Proceed.

A. It has three missions in being constructed in that form. One is that the continual opening and closing of the device, if it was simply supported by screws, would cause the entire waffle member to drop into the casing by the vibration loosening the screws and stripping the threads off the screws. It also prohibits the pastry from running out of the side and coming in contact easily with the metal surface that the pastry would adhere to. By the pastry adhering to the metal surface, it would make it difficult to remove the pastry from the iron. It also has a third purpose, of keeping the pastry and the oils of the pastry from running down into

(Testimony of William D. Wright.)

the element inside and arcing or shorting the element.

Q. (By Mr. L. S. LYON.) That is, between the waffle member and the casing? A. Yes, sir.

Q. What is the object in making the waffle baking surfaces of aluminum, rather than of some other metal, Mr. [103] Wright?

A. It has two advantages. One is the quick transmission of heat from the source of origin to the pastry that is being developed; and the second is the peculiar affinity between the aluminum and pastries, that, at a proper temperature, pastries will not stick or adhere to the aluminum casting.

Mr. BLAKESLEE.—We move to strike out the answer on the further ground the witness is not qualified to talk about the affinities and properties of these various matters. He has not been qualified as an expert. He is apparently a salesman in some concern, and I don't think he can testify as an expert on these matters.

The COURT.—Well, he made this thing, and I think he is an expert for that reason. Is that part of the combination, the aluminum a part of the combination?

Mr. L. S. LYON.—Yes. For instance, Claim 6 speaks of baking surfaces made of aluminum, and that the flange extended over is made of aluminum.

The COURT.—All right.

Mr. L. S. LYON.—I think that is all. You may cross-examine. [104]

(Testimony of William D. Wright.)

Cross-examination by Mr. BLAKESLEE.

Q. For how long a period of time, Mr. Wright, did you do nothing with this waffle-iron device that you have told about?

A. Which particular device do you mean?

Q. Well, this one,—any of these that you say you concocted and showed to your patent attorney?

Mr. F. S. LYON.—We object to that as assuming a fact not testified to by the witness, and as not appearing in the record, that there was any period of time that he did nothing with any of them.

The COURT.—Well, he can say so. Overruled.

Mr. BLAKESLEE.—It is cross-examination.

A. There has been no time that I have not been active in trying to start this project of manufacture and sale of the iron to the public.

Q. Did you make any in 1917? A. Yes, sir.

Q. How many?

A. Because of the arrangement I had with—

The COURT.—He asked you how many. Now, answer that, and you can go to something else.

A. I have made two.

Q. Sir?

A. I have made two, that I can recall just at the present time.

Q. (By Mr. BLAKESLEE.) Wasn't there a demand in San Diego [105] for heating devices at that time? A. Yes, sir.

A. Yes, sir.

Q. They were quite extensively used, weren't

(Testimony of William D. Wright.)

they, for heating curling-irons and electric plates for—

Mr. F. S. LYON.—We object to that as immaterial, and we will admit there was a demand for electric waffle-irons at that time, if you want to.

Mr. BLAKESLEE.—That is enough. Will you admit that as to 1918?

Mr. F. S. LYON.—Yes, there always has been, before Mr. Wright's invention, and since then.

Mr. L. S. LYON.—Will you make the same admission, Mr. Blakeslee?

The COURT.—Proceed.

Q. (By Mr. BLAKESLEE.) How many of those did you make, if any, in 1919?

A. I have not made any.

Q. Did you make any this last year, 1920?

A. No, sir.

Q. You say that those you did make and give to people to use, did actual waffle cooking, did they?

A. Yes, sir.

Q. Did you have any inquiries for any of them?

A. Yes, sir.

Q. Now, don't you know that as soon as batter strikes a hot waffle-iron surface, it almost immediately consolidates [106] or stops flowing and commences to cook?

A. No, sir; it does not.

Q. You are quite sure of that? A. Absolutely.

Q. How much waffle cooking have you done?

A. Considerable, since 1915.

(Testimony of William D. Wright.)

Q. Have you used one of your waffle-irons right along since then? A. Yes, sir.

Q. What years?

A. Continually since November, 1915.

Q. Referring to your patent, the patent in suit, and to Figure 1 of that patent, there seems to be indicated certain wiring extending from the switch ol—have you a copy of that patent?

A. I have not.

Mr. F. S. LYON.—We will object on the ground it is not cross-examination. The witness has not been examined in regard to anything contained in the patent itself.

Mr. BLAKESLEE.—The witness was examined, over our objection, as to certain features of this patent.

The COURT.—The objection will be overruled.

Mr. BLAKESLEE.—Read the question as far as it is completed, please.

(Question read.)

Mr. BLAKESLEE.—(Continuing.)—up to the member b? [107] A. Yes, sir.

Q. Did you devise that wiring? A. I did.

Q. When?

A. I believe it was in November, 1915.

Q. Is that same wiring present in the exhibit here, Plaintiff's Exhibit No. 5?

A. The same wiring if there, attached in a little different form.

Q. You do not have the wiring extend up to and through the pivotal point of the member b, do you?

(Testimony of William D. Wright.)

A. Not in this iron here.

Mr. BLAKESLEE.—That is all.

Mr. L. S. LYON.—That is all, Mr. Wright. Mrs. Crane, will you take the stand, please? [108]

Testimony of Mrs. William A. Crane, for Plaintiff.

MRS. WILLIAM A. CRANE, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

The CLERK.—What are your initials, Mrs. Crane, please?

A. Mrs. William A. Crane.

Direct Examination by Mr. L. S. LYON.

Q. You live in San Diego, Mrs. Crane?

A. Yes, sir.

Q. And are acquainted with Mr. William D. Wright, the plaintiff in this case?

A. Yes.

Q. Have you ever seen this exhibit, Plaintiff's Exhibit No. 3, before? A. Yes.

Q. About when was the first time you saw it?

A. I used it in December, 1915.

Mr. BLAKESLEE.—We object to this as leading, and not a proper method of proof, handing the witness something.

The COURT.—Objection overruled.

Mr. BLAKESLEE.—Exception.

Q. (By Mr. L. S. LYON.) For what purpose did you use it?

A. For baking waffles for guests.

Q. How long did you use it, Mrs. Crane?

(Testimony of Mrs. William A. Crane.)

A. Why, I used it,—oh, any number of times, on and off, indefinitely; but I much preferred the smaller irons. [109]

Q. Did this device, Exhibit 3, cook the waffles satisfactorily? A. Very, very satisfactory.

Q. I show you Plaintiff's Exhibit No. 8. Have you ever seen that before?

A. I have.

Mr. BLAKESLEE.—We object to this, if your Honor please, to this whole line, as irrelevant and immaterial, and does not tend to prove or disprove any issue in the case.

The COURT.—What is the purpose of the evidence?

Mr. L. S. LYON.—I want to prove the devices will work, your Honor, satisfactorily.

The COURT.—The objection will be overruled.

Mr. BLAKESLEE.—Exception.

Mr. L. S. LYON.—Will you read the question to the witness, please, Mr. Reporter?

(Question read.)

A. Yes.

Q. When, and under what circumstances?

A. I used it in my own home, with the exception of possibly a couple of weeks at a time when Mr. Wright has had it, since January, 1916.

Q. And it was taken from your home to bring up here as an exhibit? A. Yes, sir.

Q. And for what purpose did you use it? [110]

A. I used it for baking waffles.

Q. And was it satisfactory? A. Very.

(Testimony of Mrs. William A. Crane.)

Q. About how often did you bake waffles on it during that time?

A. Well, we used it on an average of every—oh, I don't know—two or three times a week, sometimes, and then we would rather tire of them, and perhaps a week, or two or three weeks, would not use it; and then I would use it every day; and it has been in use on and off practically continuously.

Mr. L. S. LYON.—That is all.

Mr. BLAKESLEE.—No questions.

Mr. L. S. LYON.—I hand to the Court a draft of the claims that was requested this morning, an outline of them by elements, and a copy to counsel. Plaintiff rests.

(Whereupon plaintiff rested his case.)

Mr. BARTLETT.—Shall we proceed, your Honor?

The COURT.—Yes, sir.

Mr. BARTLETT.—First, we have three exhibits that have already been considered as in, but were not in form introduced in the depositions. I have spoken to counsel on the other side, and they make no objections.

Mr. L. S. LYON.—Which exhibits are they, Mr. Bartlett? [111]

Mr. BARTLETT.—The first is the Capek illustrative model.

Mr. L. S. LYON.—That is all right.

Mr. BARTLETT.—Defendant's Exhibit No. 17, which was put in evidence and marked for identification. I now offer it as an exhibit, Defendant's Exhibit No. 17, the Capek illustrative model.

Mr. F. S. LYON.—I notice, your Honor, that the witness whose deposition was taken *de bene esse* on notice given to us,—and we were taken to Connecticut to take the deposition,—is in the courtroom. Now, I arise at this point to state that we must understand whether the witness is to testify, or they are going to proceed in accordance with our agreement to use his evidence as given in the deposition. If he is to testify, we will object to the deposition, and all of the exhibits in the deposition, and allow them to prove their case by *viva voce* testimony in open court. If, however, they wish to take the record of the depositions, the exhibits that counsel is now speaking of, of course, are under that stipulation, and part of that deposition. But the deposition is not usable with the witness here, and counsel may have his choice between using the witness or his deposition, as he wishes. We want, before there is any of the deposition used, counsel to state that he accepts the deposition, or intends to stand on the testimony of the witness. Now, there is a reason for that,—so that counsel may not be [112] under any misapprehension. We have stipulated that certain things are so, and in accordance with the testimony of the witness in the deposition. Now, those stipulations apply to the testimony as then given in that deposition. They do not apply to any testimony that this witness shall give here, and counsel may have his choice, except that we demand he make his choice now, the witness being here.

Mr. BARTLETT.—If your Honor please, we may make that election when we come to a question of whether or not we will put the witness on. At this moment it was merely marking as a complete exhibit an exhibit that was introduced and marked for identification.

Mr. F. S. LYON.—Well, there isn't any deposition before us until the situation, your Honor, is one way or the other. In other words, we are objecting to the use of the deposition entirely, on the ground the witness is in the courtroom. Now, if counsel want to accept our stipulation, we are willing to take it.

The COURT.—They are not offering the deposition; they are offering the exhibit here.

Mr. F. S. LYON.—Well, we object to the exhibit, on the ground it is incompetent, irrelevant and immaterial; no foundation laid.

Mr. BLAKESLEE.—If your Honor please, the witness is an officer—not an officer of the defendant, but we have not said we will put him on. [113]

Mr. BARTLETT.—I cannot imagine what this all is about, but I am perfectly willing to state that Mr. Lamb is here as vice-president of the corporation and to be present and show his interest in the case and assist us in any way that might be necessary to have assistance. He was not brought on here to testify or to vary his deposition. As a matter of inadvertence, when the deposition was taken, the model which was testified about and cross-examined about was marked for identification, and then the attorney who took it forgot to offer it as

a complete exhibit. Now I simply offer it as a complete exhibit.

Mr. F. S. LYON.—My only objection, your Honor, is this: I would like counsel to state whether they intend to use Mr. Lamb as a witness in this case, or whether they do not, for the simple reason this is unusual. We were hauled clear across this continent to take Mr. Lamb's deposition. Now, his deposition is here, and this exhibit in question is a part of that deposition. I am willing to fix the deposition as counsel says was agreed to, if they are going to use it, but there is nothing before the Court except counsel's own statement.

The COURT.—Well, we are wasting time here, it seems to me. What is it you are offering now, and I will rule on it.

Mr. BARTLETT.—This device which was offered and testified to and cross-examined about during the taking of [114] the depositions.

The COURT.—Well, how can I tell anything about the cross-examination or the testimony without it being offered in evidence? You can offer that in evidence. If it has got any bearing on the case, it will be in.

Mr. BARTLETT.—I offer it in evidence now, or later.

Mr. F. S. LYON.—Well, the offer is made now?

Mr. BARTLETT.—Well, suppose we withdraw that offer for a moment.

The COURT.—Well, proceed then.

Mr. BARTLETT.—Have you any objection to putting in a copy of the Capek patent?

Mr. F. S. LYON.—No.

Mr. BARTLETT.—Counsel for defendant offers in evidence as Defendant's Exhibit No. 22, copy of patent to Capek, No. 493422, dated March 14, 1893, and the same is marked Defendant's Exhibit No. 22, Capek patent.

(The document so offered and received in evidence was marked Defendant's Exhibit No. 22.)

Mr. BARTLETT.—Now, Mr. Lyon, I have a certified copy of the file wrapper and contents.

The COURT.—You don't want those exhibits to have new numbers, do you?

Mr. BARTLETT.—Now, this is the number that follows right along, No. 22.

The COURT.—All right; give it No. 22, then. The Clerk [115] seemed to be worried about it.

Mr. BARTLETT.—Counsel for defendant offers in evidence a certified copy of the file-wrapper and contents of the Wright patent in suit, and the same is marked Defendant's Exhibit No. 23, Wright file-wrapper and contents.

(The document so offered and received in evidence was marked Defendant's Exhibit No. 23.)

Mr. BARTLETT.—Now, if your Honor please, there were three depositions taken with reference to this waffle-iron known as the Simplex electrical waffle-iron, and one deposition taken as to the general art in manufacture by the defendant prior to any date of invention claimed by Mr. Wright. If it is your pleasure, I will either read those or state

the substance. I am not acquainted with the practice.

The COURT.—Both methods have been followed here. I think stating the contents of it is the better way.

Mr. F. S. LYON.—You propose to read the deposition of Mr. Lamb?

Mr. BARTLETT.—Yes.

Mr. F. S. LYON.—We object, on the ground Mr. Lamb is present in the courtroom, and the deposition and all proceedings during the taking of the deposition are incompetent. Now, I make my offer to withdraw that objection if counsel is not going to use Mr. Lamb as a witness orally. [116]

Mr. BARTLETT.—Counsel states that he has no expectation of using Mr. Lamb as a witness. There was one question about the construction of this device, which seems now to be cleared up by the production of it itself. We do not care to use him, and therefore I say we are not going to use Mr. Lamb.

The COURT.—Then proceed and state what the depositions show.

Mr. BARTLETT.—I now proceed to offer this illustrative model, do I?

Mr. F. S. LYON.—Yes.

Mr. BARTLETT.—Counsel for defendant offers in evidence Defendant's Exhibit No. 17, illustrative model of Capek device, consisting of three pieces, all tagged with the same number.

Mr. L. S. LYON.—You offer that in place of

where it was offered in the deposition, merely for identification; is that correct?

Mr. BARTLETT.—Yes.

Mr. L. S. LYON.—No objection. In place of its being offered for identification, it stands as offered in evidence.

Mr. BARTLETT.—Yes.

Mr. L. S. LYON.—At the same point in the deposition.

Mr. BARTLETT.—All right. [117]

(DEPOSITION OF JOSEPH F. LAMB.)

Mr. BARTLETT.—Now first, the deposition of Mr. Joseph F. Lamb. He is Vice-president of Landers, Frary & Clark, the real defendant, New Britain, Connecticut. That concern is engaged in the manufacture of meat choppers, food choppers, electric heating appliances, such as percolators, chafing-dishes, coffee-pots, stoves, waffle-irons, curling-irons, grills, shaving mugs, toasters, cutlery, weighing scales, breadmakers, cakemakers, vacuum bottles, pocket-knives, and table cutlery. That concern has been engaged in making electrical heating appliances since 1912, the development beginning in November, 1911.

The first type of apparatus was an electric percolator, and within six months they had, in addition to the percolator, a chafing-dish, a disc stove, sad-iron, and teapots. The other articles followed immediately after. They have been marketed over a wide territory, including the entire United States, Canada, Europe, and Australia. Starting with the percolator, they made the electrical part of the de-

vice so that the lower section is the base, and the upper section is the body. The unit is attached to the body, and the base encloses the unit.

Now, if you will permit me, logically, I will just pass to another article, and come back to these.

The COURT.—I presume you better call attention—you are following him, Mr. Lyon? [118]

Mr. L. S. LYON.—I am following,—I am trying to follow.

Mr. BARTLETT.—Over, now, Mr. Lyon, on page 10, referring to the disc stove.

“Q. What was the next electrical article you made”—this was all in 1912.

“A. Disc stove.

“Q. Please briefly outline the steps which you followed in the production of the disc stoves.

“A. In the development of the disc stove we made the plate or disc for cooking on, and then the unit was attached to the under side of the disc, and then the plate screwed to the disc, and then a drawn metal shell was fastened to the disc by three screws, enclosing the unit in such a manner that the flange of the stove overlapped the shell that enclosed the unit on the under side.

“Q. And how was the disc supported in this first stove, or cooking surface supported?

“A. On the edge of the sheet metal shell.

“Q. Did this stove work all right?

“A. Yes.

“Q. And when was the first one made?

“A. It was made in the week of June 23–29th, 1912.”

Now, may I pause just a moment to show your Honor this thing?

The COURT.—Now, what exhibit is this?

Mr. BARTLETT.—This is Exhibit No. 8, defendants’ disc stove, that I just read you the construction of. Rather than tear that one apart, I have this one as an illustrative model. You will remember I just read you his answer. Here is the cooking or heated surface, in this case plain, to cook a griddle cake on, instead of waffled for waffles. (Indicating.)

The COURT.—Go ahead. [119]

Mr. BARTLETT.—In there is that unit, similar to this one in the waffle-iron, two sheets of mica, with between them the electrical wire to be heated, and then there is the clamping plate, which clamps the unit to the back of the heated or cooking surface. And then, as a screen, and also, if you please, as a support, this sheet metal casing was applied there (indicating). That left the overhanging flange to protect the edge of the interior from any dripping or anything, and also to be supported by the upper edge of the sheet metal casing. And then legs were put on the bottom of the casing, as a support to the entire device, with a handle. That will be spoken of frequently, probably, through the case, as defendant’s disc stove. I took it a little out of order because—pardon me—I spoke of it a little out of order, because it seemed to me so typical of the

entire line of defendant's manufacture, as you will presently see developed by this deposition and the exhibits put therein. It had the heated or cooking surface, to be sure, specifically plain, but to waffle it, of course, was nothing. And then to the bottom of that was suspended the electrical unit with the clamping plate. And then over that, or under it, to shield it and protect it, was the casing, a sheet metal box, circular, to be sure, in form, but our patent in suit says that shape is of no consequence, that it may be of any shape. [120]

The COURT.—The word “suspended” is interesting.

Mr. BARTLETT.—Well, the reason I used that word was to try to, in one word, differentiate from the idea of using a box as a box or container into which these parts were laid or mounted or contained. That is built up from a foundation, built from a foundation up. Rather, that is, to use that word again, suspended from the top down. As you see when you take that plate off, or the waffle plate, they hang suspended there; they do not rest on the bottom of the casing, or depend on the casing. As my colleague suggests, in the patent in suit the casing becomes a part of the electrical unit itself. They depend on that to keep them together. So there is the disc stove.

Now, to return, Mr. Lyon, to where I was, on page 8; he was testifying about the percolator. Your Honor knows the percolator. We did not put in a whole percolator, but such a thing in general as that (indicating), and we introduced this Exhibit

No. 4 to show how that general type of construction was followed out also here. This is cut away, of course, to show. This is the bottom of the percolator, into which the water is that is heated, that spurts up through the tube, and down, in the familiar manner of making coffee in this way (indicating). Now, to the bottom of this, which is the heated or cooking surface, is attached, or, if you please, suspended, the electrical unit, with its clamping plate. Here is the plate, and there [121] are the screws. In between there is this mica wire and mica, and this rests on and is supported by this base here, which again is a screen or cover to, first, shield or screen these working parts, and, second, to support on its edges the heated or cooking surface, namely, the percolator (indicating). The significance of that, likewise, you see it is all but one development, starting from the first in 1912 or 1911, the last part. How, he says:

“Q. Is the base a casting or sheet metal?

‘A. Sheet metal.

“Q. And is the bottom of this base closed in?

“A. It is.

“Q. How did it conserve heat?

“A. By making a dead air space, which is one of the best nonconductors of heat that there is.

“Q. Now, what was the next electrical utensil you developed, and put out, after the percolator?

“A. The chafing dish.”

Now, the chafing-dish is here, and here. Now, I need not perhaps bring those to your Honor. You are familiar with the chafing-dish in general. That is an entire one. These are exhibits put in to illustrate to your Honor more clearly the construction. Here again, although differing in shape, of course, is the same general idea; the heated or cooking surface here, which now is not flat, but is bowl-shaped, dish-shaped; and to that bottom, attached or suspended, a clamping plate, holding between it the electric unit, namely, the two sheets of mica and the wire between; and then that is superimposed on the sheet metal base, the edges of the heated or cooking [122] surface extending over the upturned edges of the base, resting on it, and preventing anything running down from the cooking surface into it. This exhibit is of the same thing, but is cut away to show precisely how that is done, and you see there again the bottom of the heated or cooking surface, the attached unit, and the base with its upturned edge and the overhanging flange of the heated or cooking surface (indicating).

The witness then identified these parts and produced them, and they were introduced, the section and the completed thing.

The next article was what was known as the sad-iron or flat-iron. That one I need not take time at this moment to proceed with, except to show that that is electrically heated, as the witness testifies, and that unit is attached in the same way, and that casing is put over in the same way.

And then came the disc stove, which I have al-

ready explained. I ought perhaps also to add to that what appears in the deposition, that after they made this first form, which I showed you, they brought out this form (indicating), which is not different mechanically, but is slightly different in appearance. The reason is explained. This casing here, being a single sheet metal casing, and this, what they call the wattage, in here, being high, it got so hot it discolored this, and therefore after people used that, they [123] did not like to have the discoloration. So Mr. Lamb says he took that same thing as it is, and simply added this ornamental casing around here, with the dead air space between, and then the heat that was here would not pass out hot enough to this outer casing to discolor it, and it always remained in that bright and attractive shape. But I think it is perfectly clear that this is still electrically and operatively the same as this, this addition here being purely for the purposes which I have stated.

Mr. F. S. LYON.—The only substantial change, then, was the dead air, nonconducting space around the outside; is that it?

Mr. BARTLETT.—Yes, and the polished metal shell. May I look at that? Is that Exhibit No. 9? Yes, Exhibit No. 9. It is rather interesting, this question and answer. If you will pardon me, I will read it.

“Q. In this Exhibit 9 I see a section has been cut from it. Please look at the cut surface of this stove, Exhibit 9, and state what the parts are which are to be seen?

“A. The upper part is the disc or cooking member. To the under side of this is attached the unit, which is held up against the disc by the pressure plate.”

The COURT.—By the what?

Mr. BARTLETT.—The pressure plate. I called it the clamping plate. It is that plate which is screwed up against it. We can carry it best in our minds, perhaps, if we remember this one (indicating). [124]

The COURT.—What interested me was this, and this seems to be solid there (indicating).

Mr. BARTLETT.—Well, that is merely a support. You see, there is the unit; the plate is there (indicating.)

The COURT.—The streak in between?

Mr. BARTLETT.—The streak in between is the electric unit; the clamping plate is down below.

The COURT.—I see.

Mr. BARTLETT.—Just like this one—no, your Honor will pardon me—precisely like this (indicating). You see, here is the plate, and you see these streaks in there (indicating).

The COURT.—Yes.

Mr. BARTLETT.—So there it is sawed through, in that pie-shaped form, you see, and it brings it to a point. I merely read the answer because it seemed so clearly descriptive.

“The cooking surface, or disc, is supported by a drawn sheet metal shell, being supported on the edge of the sheet metal shell. Enclosing all is a nickel sheet metal shell, supported on

the under side of the supporting shell for the disc, out of contact with the cooking surface.”

Now, your Honor’s mind may have suggested, why here they haven’t but one shell around that waffle unit; why doesn’t that discolor? Well, the difference is that in a single-disc stove all the wattage goes into the one unit, and you get very high heat, whereas in a [125] waffle-iron the one heat is distributed between two plates, so that you only get about half the heat in each plate, and that half heat is not enough to discolor the metal shell, and therefore they do not have to have an extra metal shell.

Now, the next was rather an interesting device, known as the tourist’s iron. I am just about through. As I feel I may be taxing your Honor’s patience, we will presently end. It interested me because it was so unique. This is known as the Tourist’s Iron, because it is primarily a flat-iron or a sad-iron. The handle is there. You connect here with your electric wire, and use it to iron. The ladies, or what-not, traveling, have one of those in the room, and they iron out light goods. And there is the holder for it. By the same token, some of these—you may have a child along, and want to heat some milk or other matters, and so they arranged so that this stand has these two holes, and they take those two pins in here, and then that is inverted and based on there, this being cut away to allow the wiring to come in, and you use it as a little cooking surface, and set a little pot of milk or water or anything on there that wants to be

heated (illustrating). In the old days there were some other things put on to be heated. Now, when we use it that way, then we have a repetition of all this line here, to wit, the heated or cooking surface, to the bottom of which is [126] attached or suspended the electric unit by a clamping plate, underneath which is a metal shell, supporting on its edges the heated or cooking surface, and the heated or cooking surface having a flange edge extending over the edge of the casing to protect it and be supported by it. So the little Tourist's Iron becomes, in effect, another one of the cooking or heated utensils, all embodying this same general principle of construction, and all long prior to the Wright patent in suit, or any date testified to here. Now, I need not read his description of that, because I think I have fairly figured it.

Then there is this statement:

“Witness in testifying as to dates of manufacture and sale of the electrical utensils hereinabove inquired about, has produced certain original books of Landers, Frary & Clark, which have been examined by the plaintiff's counsel, and it is stipulated and agreed by and between counsel for the respective parties that the dates of manufacture and sale, and the fact of manufacture and sale of the goods testified about, in substantial quantities, are as testified to by the witness. The books produced by the witness were the order, stock and shipment records of electrical utensils for the year 1912; record book of the printing department for

labels and catalogs for the period of April 9, 1912, to November 11, 1912. It is further stipulated and agreed that there has been a general circulation of catalogs and display cards and advertisements containing illustrations and electrical utensils hereinabove testified about by this witness, during the period from April to November, 1912."

There then were introduced a series of five patents, granted to Mr. Lamb, to which I may direct your hasty attention at this time, merely to save reading large portions of the deposition. They are not particularly important, [127] but they are documentary evidence.

Now, there is the percolator to which he testified, in that patent (indicating). You see, there is the heated or cooking surface, in which the water is, and here is the electric unit and clamping plate, with the screws passing up from the bottom to this. Here is this plate, with its edge coming here to support this part here (indicating), and the screen enclosing the working part. That same one shows the application of the same idea to the chafing-dish. That is the patent of 1913. Is it light enough for you to catch the electric unit in there, the little streak?

The COURT.—Yes.

Mr. BARTLETT.—Shall I proceed, your Honor?

The COURT.—Yes, sir. I was just trying to see how that connection was made.

Mr. BARTLETT.—You mean, how it is fastened to the bottom?

The COURT.—No.

Mr. BARTLETT.—Well, the wires are concealed inside.

The COURT.—In here?

Mr. BARTLETT.—If you see here, they are shown to show it, but as a matter of fact they come out here to an opening in the side, and then they have a plug. Have you got one of those plugs, you fellows?

The COURT.—Here is a plug.

Mr. BARTLETT.—Yes, the plug goes in there.
[128]

The COURT.—How is that connection gotten up into this? It comes up in there?

Mr. BARTLETT.—No, it comes right in here (indicating). We did not put the wires in, you see. Excuse me. It is a hard thing to show those terminals.

The COURT.—They are connected right inside there, are they?

Mr. BARTLETT.—Yes, you can feel it with your finger. If you put your finger in where mine is, you will feel that wire.

The COURT.—Yes.

Mr. BARTLETT.—They come to that hole, and then the plug connects. I don't know that I need take the time on that patent. It speaks for itself.

This shows the sad-iron. This is Defendant's Exhibit No. 13.

The COURT.—It shows this iron you have been talking about?

Mr. BARTLETT.—Not the Tourist's Iron. It

shows the sad-iron, but chiefly this disc stove.

The COURT.—All right.

Mr. BARTLETT.—You see, there is shown this fellow here (indicating). That is the top (indicating).

The COURT.—Yes.

Mr. BARTLETT.—And there is the electrical element, with screws passing through this plate, and holding it up [129] against there; and there is the sheet metal base, casing, screen, whatever you want to call it, that covers what I call the working parts, and holds on its edge this heated or cooking surface, with the electric unit attached thereto. In other words, there is the patent demonstrative of the same construction which he testifies to, and that patent is dated April, 1913,—applied for in May, 1912. So that, aside from the admission—pardon me, there is one more patent. That one does not need time to explain, because it is cumulative. I hardly need call attention to further of these patents, except that they all illustrate again, in different forms, that same idea of construction.

“Q. Referring to Defendant’s Exhibit 11, patent No. 1060263, please state whether or not the method of mounting the vessel on the base as illustrated in the drawings, is substantially like what Landers, Frary & Clark has used, and is using to-day? A. It is.”

Mr. L. S. LYON.—Where is that?

Mr. BARTLETT.—That is on page 14, Question 66.

“Q. And is the same true of the arrangement shown in Figure 4 of Exhibit 12?

“A. It is.

“Q. And in the drawings of Exhibit 13, patent No. 1060265”—which is the disc stove patent. A. It is.”

And then he goes on to explain what I have already explained, why the outside shell was added. I need not read that, I think.

“Q. This same arrangement, the flange plate, is used in the Tourist’s Iron, Exhibit 10?

“A. It is. [130]

“Q. As to exhibits 14 and 15, do they show an arrangement for attaching the vessel to the base such as has been and is being used by Landers, Frary & Clark? A. They do.

“Q. Considering now the complete development of the electrical utensil business of Landers, Frary & Clark, will you please say whether or not they have, in any of the cooking utensils which they have manufactured, varied in any substantial respect the method of supporting the cooking surface on the base?

“Objected to as calling for a conclusion of the witness. A. They have not.”

Mr. L. S. LYON.—I would like to have a ruling on that objection, your Honor.

The COURT.—The objection will be overruled.

Mr. L. S. LYON.—Exception.

Mr. BARTLETT.—(Reading:)

“Q. Do you know this from your personal familiarity with the method of construction of

the various cooking utensils of Landers, Frary & Clark?

“(Same objection.)

“A. I do.”

Mr. L. S. LYON.—In that he is asking the question whether or not a whole lot of these are the same, I can't see that that is anything more than a conclusion.

The COURT.—He is giving his opinion as to whether or not there has been any variation.

Mr. L. S. LYON.—I think that is considered improper. He can state what the thing is, and how it works; but whether or not they are the same, I don't think that is anything but a conclusion. It don't seem to me that that is evidence. [131]

The COURT.—The question is, whether they varied in their construction.

Mr. L. S. LYON.—Well, the question is, he takes a lot of these things and lumps them together and says, “Are they all the same, substantially the same?” And the witness says he thinks they are. I don't see what evidence that is.

The COURT.—Well, I will overrule the objection.

Mr. L. S. LYON.—Exception.

Mr. BARTLETT.—(Reading:)

“Q. And, just briefly what is this method of construction?

“A. The cooking utensil is supported on a sheet metal base.

“Q. Will you go into it a little more in detail

and describe what the character of this support is?

“A. The cooking utensil has a unit attached to the under side, and a sheet metal base is then mounted to enclose the unit and to support the cooking utensil.”

Those are facts, you see.

“Q. Then do I understand that the sheet metal base has a surface of one sort or another upon which the cooking utensil rests?

“Objected to as grossly leading, especially as taken in connection with the previous answers of the witness. A. It has.”

I don't care whether it goes in or not. It is a sort of rake-after-cart of the whole thing that goes before. Then there was that complete chafing-dish sale proved as of May 10, 1913. I don't think that is particular to go into further. He was asked about whether some of these things made by Landers, Frary & Clark were made under protection [132] of patents, Exhibits 11 to 15, inclusive, and the answer was that they are. That perhaps was properly objected to as incompetent, as calling for a conclusion of law, although the point of the question was whether they purported to be under patent protection.

Mr. L. S. LYON.—We will withdraw the objection, Mr. Bartlett.

Mr. BARTLETT.—All right; it is not urgent. They are marked with the patent dates.

Then he explains how they cook in these chafing-dishes, sometimes directly over that unit which I

have shown your Honor up there, without a pan. If they want to scramble eggs, or make fudge, or what-not, they put it right in there. But if you want to cook a cereal or Welsh rarebit, or something, they put a little water in there, and then use a little pan over the water, and it won't stick, you know.

The COURT.—Does that furnish the beer for the Welsh rarebit?

Mr. BARTLETT.—The sale of those has dropped right off. I wish I could answer yes, if your Honor will excuse me.

Now, we come to a significant patent that was introduced, and that is the patent to Capek. I am afraid, Mr. Lyon, I will have to use yours, or use that exhibit. You know, no matter how careful, if your Honor please, your office is supposed to be, they will send you away on one of these [133] trips with some screw loose somewhere, and I have not got enough copies of this Capek patent. But with your permission, I will use the one that has been put in as an exhibit. It is unmarked. Now, may I, at your desk, summarize what the deposition says about this?

Mr. F. S. LYON.—I can furnish the Judge with a copy, if you wish.

Mr. BARTLETT.—All right. Thank you very much. I presume they wrote for them to the Patent Office, and did not get them; I don't know.

Now, to start with our understanding of this patent, which is in 1893,—and that is considered among our kind as a very early development of an elec-

trically heated cooking device. Here is his dish, shaped substantially like this, if your Honor pleases, a dish-shaped receptacle into which the article to be cooked is put; and then he has his electric unit,—you see that black line with the wires in it there, looking at Figure 1?

The COURT.—Yes.

Mr. BARTLETT.—And that is attached likewise to the base, attached or suspended to the base, or under side, of the heated or cooking surface. Outside of it all, and with an air space between, he puts a metal casing, marked 26 on the right-hand side there, and that supports the heated or cooking surface at this upper edge; and that edge of that heated or cooking surface is extended over [134] and round the edge of the supporting casing; and then below he has a standard for the support of the entire thing.

Now, he goes at length into these electrical connections and all, because at that date those all had to be worked out. Of course, at this present date they just diagrammatically show them, because everybody knows how they are. And then he shows the various applications of that idea. For instance, instead of having that chafing-dish affair, or bowl-cooking affair, he could put a teapot on top of this unit here, understand me, cut this right through and lay that on it, or he could put a coffee-pot on, or, he says “I can pivotally connect”—if I may use that expression—“I can hinge two of these things together, each one of them provided with an electrically heated unit,” as you see in dotted lines there; and then

he says, "I can cook either open that way, making two several lids to cook on, or by the hinge I can turn the one up over the other and cook in between." So, of course, if we wanted to put a waffled surface here, and a waffled surface there, we would turn that over, and there you have got your waffle-iron. That is a very early example also in the prior art of this device of the leading wire from the source of electrical supply. You see those two cords. They come in as one, and then they are divided, one going over to one, and one over to the other. [135] That halves the current, so it heats both, and does not over-heat either. And then there is that little knob down there, which forms a thing to catch hold of when you pull it over, and also is the leg or support for it when it is pulled over (indicating). Now, that seemed to us very significant, in view of such an old prior art, that, as shape is no part of Mr. Wright's invention, and he so states, that those could just as well be oblong as to be circular, just as Mr. Wright's could just as well be circular as to be oblong. In fact, many waffle-irons are circular.

The COURT.—The rectangular feature has nothing to do with the thing?

Mr. BARTLETT.—Not the slightest.

Mr. L. S. LYON.—It is claimed in 7, 8 and 9 that they are box-shaped. We don't agree to that statement.

Mr. BARTLETT.—They are simply box-shaped, but your patent, Mr. Lyon, states in so many words they can be in any shape desired.

Mr. L. S. LYON.—And then claims one particular shape.

Mr. BARTLETT.—Now, if you are disclosing an invention to the public, this is a part of the notice, “If you make this round, you are just as much on my patent as if you make it oblong.”

Mr. F. S. LYON.—We agree with you on that, round and square. [136]

Mr. BARTLETT.—And by the same token, if you find the round shape is old, then you are just as much ahead of me. There is the prototype, if your Honor pleases, of the entire electrical heated waffle-iron proposition, and hinged plane proposition, there and there (indicating). Now, he does have a peculiar hinge, which is interesting, because he makes it adjustable, so that you can cook thinner or thicker things between the two surfaces when they are closed. If you had a real good, thick Delmonico steak, you would adjust your hinge so as to open it wide enough and stick it in between the two surfaces. If you had a thin slice of bacon, you would also adjust it to that. There is an object in having the peculiar hinge.

Mr. L. S. LYON.—Where do you contend the cooking surface is?

Mr. BARTLETT.—And this also, as I have indicated, divides the wattage between both—I beg pardon, Mr. Lyon.

Mr. L. S. LYON.—I asked where the cooking surface was, that you would put your steak on.

The COURT.—That would be 44, wouldn't it?

Mr. BARTLETT.—Yes, this line right across there (indicating).

Mr. L. S. LYON.—Isn't that the top of the dish? How could you put a steak on that?

Mr. BARTLETT.—No. 44 is the top surface. Look at the [137] flange coming over at the edges. Here is the description—

Mr. L. S. LYON.—Do you contend that that heating element 18 down at the bottom there would cook a steak up on top of that arm?

Mr. BARTLETT.—Yes.

Mr. F. S. LYON.—And with a dead air, nonconducting space in there?

Mr. BARTLETT.—But even if you didn't, there is no invention in cutting that off and making it thinner. Now, to illustrate that in a concrete way, Mr. Lamb made up a model of this Capek device. Of course, I noticed my friend suggested, "Oh, well, you have got your heat too far down." But if you were going to cook something that needed quick heat, and your heat was a little shy, either from no electric current, or small electric current, or anything, of course any manufacturer, without being taught by Mr. Wright or anybody else, would simply cut this off and make them shorter, so that you would have your thing to be cooked closer down. Now, we made this of aluminum. That is Figure 7 of the Capek patent. There is the knob. Now, just to show how it can be done by anybody, if they want to, instead of cutting that down, you see, as he has shown it, applied to the bottom, we take those things out and we put in a disc stove, if you please, or a

waffle-iron, or anything. For instance, we take, of course, for [138] this case, a couple of waffle-irons. Now, you put those in there, and we screw them up—these are not aluminum; they are made to look like aluminum; they are made of wood, and the wood is warped a little there; but I will show the thing just the same.

Mr. L. S. LYON.—You haven't got any heating element, have you?

Mr. BARTLETT.—Certainly, we have our heating element on the bottom of this, the same as yours on that.

Mr. L. S. LYON.—It is not in there now, is it?

Mr. BARTLETT.—Oh, well, we didn't go to the trouble of making up a heating element.

Mr. F. S. LYON.—You never did, did you?

Mr. BARTLETT.—Of course we did not make the Capek device, and do not claim we did. This is to show the prior art disclosed in patents. Now, we put this thing in there, just substitute one for the other, screw them on here, and fold them over, and over they go, just like that (illustrating). Now, my friend says, "you didn't put an electrically heating element on." For the purposes of illustration, we assumed we all used our mental sense. Of course, if you were going to cook on this, you would attach, just as we attach all the others, and as Capek himself attached his,—we would attach the unit there and put it into that base support. That is a metal casing, and here is the edge extending over, and that metal casing [139] supports it.

The COURT.—I don't understand. I think Mr. Lyon's questions are pertinent. This thing was not manufactured?

Mr. BARTLETT.—It was not.

The COURT.—You have got it up simply to illustrate?

Mr. BARTLETT.—Precisely. We have got it up simply to illustrate in this form in which I showed you first, Fig. 7 of the Capek patent, and then to illustrate the transition, we put these waffle irons in instead of these bowls.

Mr. L. S. LYON.—That never was done until after this suit was filed.

Mr. BARTLETT.—No, never was. It was just made up for this case. It is not pretended that Capek made a waffle-iron, but it is clear that Capek showed the construction that is followed by us, rather than the construction as shown and disclosed by Mr. Wright in his patent.

(Whereupon Court adjourned until ten o'clock A. M., Wednesday, December 8, 1920.) [140]

Los Angeles, California,

Thursday, December 9, 1920, 10 o'clock A. M.

The COURT.—Proceed with this case on trial, Wright vs. Pacific States Electric Company.

Mr. BARTLETT.—May it please the Court—shall I proceed?

The COURT.—Yes, sir.

Mr. BARTLETT.—You recall we were in the midst of Mr. Lamb's deposition, and had come to that Capek device, and had somewhat explained it, as he did.

Now, proceeding with that, I come to the bottom of page 18, gentlemen, and on to page 19.

“Q. And your idea in making this is merely to have it illustrative of the Capek patent, Figures 1 and 7? A. It was.”

It was marked as for identification, and we now have it in as full. Mr. Lyon moved to strike out all testimony of the witness referring to the so-called Capek device, as incompetent, irrelevant and immaterial. Do you wish to press that?

Mr. L. S. LYON.—I merely make that on the ground it is not evidence. It is restricted as an illustrative model, so it is not really evidence in any sense.

Mr. BARTLETT.—Well, you will not strike out the deposition?

Mr. L. S. LYON.—Oh, no, I don't care to. [141]

The COURT.—Well, proceed.

Mr. BARTLETT.—Now comes the cross.

Mr. L. S. LYON.—I would like to read the cross-examination, if I may.

Mr. BARTLETT.—Very well.

Mr. LYON.—At least, such portions—I may quote some of it, and state the rest.

Mr. BARTLETT.—Very well.

Mr. L. S. LYON.—Mr. Lamb, the witness in the case, is vice-president of Landers, Frary & Clark, the real defendant in this case, and he states he was one of the principal parties, or the prime instigator, in the development of these different devices; and the Court probably noticed the patents were

taken out in his name on a series of devices that have been produced, and he was consulted in the development of all of these devices.

The Court will remember in the opening statement that I stated that we expected to prove that Landers, Frary & Clark made a practice of copying the other manufacturers of electrical devices, and that it was in conformity with their practice that they produced this waffle-iron, imitating other inventors. Now, we took up each one of the devices they have produced here, their percolator, their iron, and so forth, and asked them if they had not followed other people in the art. Now, the first device they say they produced was the percolator. In cross-question 104 [142] the witness was asked:

“Q. I understand you that the percolator was the first electrically heated device; is that correct? A. Yes.”

Then cross-question 108, the question was asked:

“Q. But prior to Landers, Frary & Clark’s first manufacture of an electric percolator, there were electric percolators for sale on the market, were there not? A. Yes.

“Q. And by whom?

“A. The General Electric; Westinghouse; Simplex; those three.

“Q. And perhaps others? A. Yes.

“Q. Now, the next article that you manufactured, as I understand you, of electrically heated appliances, was the chafing-dish; is that correct? A. Yes.”

Then cross-question 113:

“Q. Now, prior to your Company’s production of the chafing-dish, chafing-dishes were old on the market, electrically heated?

“A. Well, yes—I wouldn’t say they were old—there was electrically heated utensils on the market.

“Q. And who were selling those, to your knowledge?

“A. The General Electric is the only one that I know of.

“Q. And at about this same period, as I understand you, you brought out a sad-iron.

“A. Yes.

“Q. Prior to your bringing out a sad-iron, a great many companies were selling electrically heated sad-irons, were they not?

“A. I wouldn’t say a great many companies; there were a few.

“Q. Will you name those that you know of?

“A. General Electric, Westinghouse, Simplex, and the Hot Point Electric Company.

“Q. And prior to your development of an electric heated stove, or the production of it by your company, these also were old in the art, were they not?

“A. There were others on the market; I can’t say how old they were.” [143]

Question No. 120:

“Q. You manufacture and sell electrically heated waffle-irons, I think you said. Is that correct? A. We do; yes.

“Q. And since when?

“A. Since October, 1917. That is the manufacture, as I understand it, not the development.”

Now, our patent was issued in January, 1917, and their first stove was introduced in October, 1917. It is on this testimony of the vice-president of the company that we base our contention that we have shown their custom of following other people in the art.

Question 124:

“Q. And Landers, Frary & Clark has assumed the defense in this case in which you are testifying, have they not?”

Now, the answer to that question was omitted by the reporter, but I understand it is stipulated that the answer is, “They have.” Is that not correct, Mr. Bartlett?

Mr. BARTLETT.—Yes.

Mr. L. S. LYON.—Now, coming to the defendant's device, I particularly want to call the attention of the Court to the questions beginning at 130, on page 23, Mr. Bartlett. The Court will remember it asked counsel for the defendant what he contended they did not have in Claim 6 of this patent?

The COURT.—Yes.

Mr. L. S. LYON.—The first thing counsel stated that they did not have, was that they did not have casings pivotally connected together. That is specified in the second [144] clause in the claim, “Casings pivotally connected together.” Now, the witness, the vice-president and chief man who developed these things, was asked this question:

“Q. Now, the waffle-irons manufactured and sold for your Company include a pair of casings pivotally connected together, do they not?

“A. They do.”

Mr. BLAKESLEE.—Our contention was, your Honor, not pivotally connected together as in the patent. That is the distinction we make. The patent describes a particular pivot which is necessary to the operation of the device, and that we have not got.

Mr. L. S. LYON.—Now, the next distinction—

The COURT.—I don't know that I understand that, but go ahead with the deposition, and we will bring it out in the argument.

Mr. BLAKESLEE.—Yes, sir.

Mr. L. S. LYON.—Then counsel pointed out as the other distinction the fact that their heating element, he said, was not mounted in the casing; it was not mounted in the casing, because, he said, it was held up from the top here, so it was not mounted in the casing.

The COURT.—“Means mounted in said casing, between said casings and said waffle members, for electrically heating said waffle members.” The contention is that they have not got that.

Mr. L. S. LYON.—That they have not got it mounted in there. They have the electrical heating unit, but they [145] say it is not mounted in there, but it is held up from the top, while ours is held up from the bottom.

Mr. BLAKESLEE.—Suspended.

Mr. L. S. LYON.—Now, of course, our conten-

tion is, whether it is held up from the bottom or the top, it is mounted in the casing. The witness was asked this question:

“Q. And each of them includes a waffle member provided with aluminum baking surfaces mounted on each of those casings, do they not?

“A. They do.

“Q. And those aluminum baking surfaces are so formed that each of them covers the upper edge of their respective casings, do they not? A. They do.”

Do you care to refer to any other part of the cross-examination on that point, Mr. Bartlett?

Mr. BARTLETT.—There are two or three points I will take up.

Mr. L. S. LYON.—That is the point that I wished to make in regard to that.

The COURT.—That is all in relation to Claim 6.

Mr. L. S. LYON.—Now, I am passing from the testimony in regard to that claim, to another proposition in the deposition. In referring to this Capek model produced, a couple of bowls, in which they made an illustrative model of that patent, the witness was asked:

“Q. That is, this specimen produced by you is not a workable article, but is merely for illustration purposes? A. Yes.” [146]

Which brings out the proposition that this is merely a restricted device to show the contention of counsel, and not to show evidence.

The COURT.—They admitted that,—an illustra-

tion of what could have been done, or what may be done.

Mr. L. S. LYON.—Yes. And then, at Cross-question 155, the witness again admits that his company has the control of the defense of this particular case, which I understand is admitted.

Now, this particular iron here is stipulated to have been manufactured and sold prior to Mr. Wright's invention, this electric iron, the Simplex iron (indicating). It consists of a base as distinguished from our casing arrangement, and it has these individual waffle members that move on this base, similar to the idea of those moving on there (indicating). These individual members are not made of aluminum, and do not have aluminum flanges or the other features of our claim.

Now, the witness was asked—this waffle-iron, the evidence shows, was made from the beginning of 1904 on, and it is the only waffle-iron electrically heated that has ever been made prior to Wright's invention. The witness was asked:

“Q. Prior to the development of your waffle-iron, were you and other officials with whom you advised, familiar with waffle-irons manufactured by the Simplex Electric Heating Company? A. I can only answer for myself. [147]

“Q. Were you, personally? A. Yes.

“Q. Do you consider the Simplex Electric Heating Company waffle-irons the equal of yours? A. In what way?

“Q. As a commercial article, and one which you would advise the trade to purchase.

“A. I do not.

“Q. For that reason you manufactured your own form of waffle-iron, instead of that manufactured by the Simplex Company; is that correct? A. Not for that reason.

“Q. Why?

“A. We manufactured waffle-irons because it was a natural development of our line. We never considered the Simplex, their iron, at all.”

We want to particularly emphasize that answer as showing the defendant did not follow anything he got out of this iron; that he knew about it, and admits he never followed this at all, but developed a different proposition.

“Q. You don’t consider it in any way comparable in structure or operation, to your iron; is that correct?

“A. I have never used the Simplex waffle-iron, and would not be in a position to give you a fair answer.

“Q. Do you believe that if presented at the same price, to the same trade, that your waffle-iron will outsell the Simplex waffle-iron?

“A. That is not a fair question. It would be impossible to produce the Simplex iron at the same price, and it could not be used in the same way.

“Q. Why not?

“A. Because it takes more current than goes on a lamp socket.

“Q. How about the cost of manufacture on the two, how do they compare?

“A. I couldn’t tell you, because I have never made a comparison; only I do know this, that it would cost more to manufacture the other.”

Those answers we particularly call the attention of the Court to, show that the defendant admits their [148] waffle-iron serves a different function, and is more economical to make, and works on light circuits, and other things, as I explained to the Court, and that this one will not. And in fact, their vice-president, in tracing the development of their iron, has thus repudiated this thing as being the foundation for their iron.

The COURT.—This Simplex, is it a patented thing?

Mr. L. S. LYON.—I do not believe there is a patent in evidence; I have not seen it. But it has been made for years, and sold for hotel purposes, since 1904, and we stipulated that.

Mr. BLAKESLEE.—And it has electrically heating elements.

Mr. BARTLETT.—Then it won’t be necessary to read these depositions about the introduction of the Simplex.

Mr. L. S. LYON.—I don’t think so. We have stipulated in the deposition that it was made.

Mr. BARTLETT.—Just a moment, if your Honor please. I want to read some of the cross

that my friend omitted, as bearing on the proposition of being copyists. He asked Mr. Lamb:

“Q. What led you to go into the electrical appliance business?

“A. Because we were in the alcohol heating lines. We realized that with the great demands for electricity, it was very important we should add that to our line, together with alcohol.”

And right here I have obtained permission from my friends to introduce as exhibits the Landers, Frary & Clark catalog showing the alcohol line, and one also showing the electrically-heated line.
[149]

Mr. L. S. LYON.—We will admit that those can be offered in evidence for illustrative purposes, Mr. Bartlett, if you will offer that sectioned iron of yours for the purpose of illustrating the inner construction of the alleged infringing device.

Mr. BARTLETT.—I make the trade.

The COURT.—Sir?

Mr. BARTLETT.—I told him I would make the trade.

The COURT.—All right.

Mr. L. S. LYON.—We would like to get that iron in, without cutting one up.

The COURT.—All right; let those catalogs and this iron be marked in evidence.

(The two catalogs and the iron were marked, respectively, Defendant's Exhibits 24, 25 and 26.)

Mr. BARTLETT.—Now, that is the reason they were going into the electrical line.

“Q. The percolator was the first? A. Yes.

“Q. And before your conception of the manufacture of a percolator by your company, or the conception of Mr. Smith, or anyone of your company, electrically heated percolators were on the market, manufactured by other companies, were they not?

“A. They were. Pardon me, I might answer in this way: There was no concern that I know of that manufactured a complete electric percolator. The electric part of the utensil was manufactured by an electric concern, and the utensil itself by a concern that made those utensils. Here is a device where the chafing-dish is made by one manufacturer, and the electric stove to which it is attached is made by the Simplex Company.” [150]

Will your Honor excuse me if I bring this to the bench?

The COURT.—Certainly.

Mr. BARTLETT.—He says, “We, or such people as we, made the chafing-dish. Simplex, or such people as Simplex, made the electrical heater.” And then they took the chafing-dish, percolator, or the like, and by mechanism attached it to their stove.

The COURT.—Instead of an alcohol lamp?

Mr. BARTLETT.—Instead of an alcohol lamp. And he explains, when the defendant came in, it was the first to make the entire device as an electrically-heated unit, so that there was no separation of one and the other, and it had no means of fastening, but were all built-in together, as I showed you the

other day. So that, even in the worst sense, we are not copyists, in that we started out on an entirely new line. But I cannot, myself, quite see the force of it. Of course, that will come in argument later.

Mr. L. S. LYON.—Of course, in the next question, Mr. Bartlett, before you people ever thought of doing that—

Mr. BARTLETT.—I will read that.

The COURT.—Wait a moment, Mr. Lyon.

Mr. BARTLETT.—Now, he also says:

“This is an old percolator made by Landers, Frary & Clark, and sold to the American Electric Heating Company, who added the electric stove.” [151]

Now, this is such a thing as you will see when you come to look at the catalog, a regular alcohol-heated percolator, and an alcohol lamp used to stand in here. They sold it to these fellows, who just put that thumb-screw business there, and hitched their electric plant, so to speak, instead of the alcohol lamp, to it. And that was the way they got it first, and a great many were sold that way. When our people really went into it, themselves, then they made a base here and attached, as I showed you the other day, the heater, and made a different unit from it (indicating). So that, while it is true, in one sense, if your Honor please, that there were other things of this household sort made by several different companies, no one pretended to pre-empt for all time the production by others, particularly if it was an advanced line. And Mr. Lamb adds:

“Landers, Frary & Clark, I believe, were the first ones to make a complete electric percolator.”

Then my friend read the rest.

Mr. L. S. LYON.—The next question—to make that complete,—

“Q. But prior to Landers, Frary & Clark’s first manufacture of an electric percolator, there were electric percolators for sale on the market, were there not? A. Yes.”

Mr. BARTLETT.—I have just explained there were these on the market.

The COURT.—I think I understand that. [152]

Mr. BARTLETT.—Now, they go through with that all, and at the end Mr. Lamb says again:

“There were, but as I said before, there were no devices in the percolator line on the market that were enclosed with a base on the bottom, in the way we have enclosed this one.” And so on.

Now, my friend read part of his cross-examination of Mr. Lamb as to the claims, which is all clear enough and all right enough, from that viewpoint, and after he had gotten through with the pivotal connections, he asked him:

“Q. And included within your waffle-iron are means mounted in the casings, between the casings and the waffle members, for electrically heating the waffle members; is that correct?

“A. Not between; I wouldn’t say between. There is an electric unit positioned on the bot-

tom of the waffle-iron, the same as we do with all other appliances.

“Q. The electric-heating units are positioned between the bottom of the cooking surface and one face of the casings, between which the cooking surface is mounted?

“A. It is fastened to the bottom of the waffle-iron.

“Q. Then in your waffle-irons the heating units are placed between the heating surface and one surface of the respective casings; is that correct?

“A. There is no space between the unit and the surface; it is fastened right to it. The question would indicate that the unit was placed in between the two. It is not; it is clamped against the heating surfaces, the same as in the other electric appliances, just the same as we have done in everything we have made.”

The COURT.—I don't understand the distinction he is making there.

Mr. BARTLETT.—Well, would you like to interrupt there to explain to your Honor a moment?
[153]

The COURT.—Either do it now or in the argument, as you please. It would come best in the argument.

Mr. BARTLETT.—Perhaps so.

The COURT.—All right.

Mr. BARTLETT.—I meant, I did not want to have the Court feel I evaded it now, at all.

“Q. Is there anything between the heating element and one face of the casing?

“A. There is.

“Q. What?

“A. The plate that clamps the unit, just as we do in the stove, the chafing-dish, and everything we make, identical.

“Q. Then, as I understand you, your waffle-iron includes a heating element mounted between the casing and the waffle members, for heating the waffle members; is that correct?

“A. No, it is not; it is attached to the heating surface; there is no space between.

“Q. What do you mean, ‘There is no space between’?

“A. Between the unit and the waffle-iron and the casing. There is a space beneath the underside of the plate that clamps the electric unit to the waffle-iron.

“Q. Except for this plate, there is nothing between the heating element and the face of the casing below, is there? A. No.

“Q. You mean there is not?

“A. There is not.

“Q. Well, then, considering the face of the casing, and the waffle member, there is in your waffle-iron a heating member, is there not?

“A. No. There is a heating member between the plate and the waffle-iron. There is a plate to add in between there that clamps. This unit is clamped to the bottom, and there is a plate

underneath. There is air space below the plate, but not between the unit and the waffle-iron.

“Q. What is the function of this plate?

“A. To hold the unit against the cooking surface to be heated.

“Q. That is the only function of the plate?

“A. That is the only function.” [154]

Now, that fills in what my friend did not read; and, as your Honor has expressed yourself to postpone the explanation to the argument,—my friend, Mr. Blakeslee, suggests, if you are willing, that I do it now,—that the point might slip away from us. I took you at your word.

The COURT.—I think you better let it go to the argument.

Mr. BARTLETT.—Yes; thank you.

Now, my friend read a little of the cross-examination about Capek, that resulted in showing that a very efficient waffle-iron could be made that way; and he considers the two identical, only one is round and the other is square.

Mr. L. S. LYON.—Now, you have passed one question I would like to know if you rely on, and these is an objection, Question 148, and the answer to Question 148. If that is to be considered part of the evidence, I would like to have a ruling on the objection.

The COURT.—Proceed.

Mr. BARTLETT.—Let's see,—“And this specimen that has been produced by you”—Oh, yes, he was asking about Capek, and Mr. Lyon was cross-examining.

“Q. And this specimen has been produced by you, with the Wright waffle-iron in view, to show how the Capek device can be adapted to approximate, in your opinion, the Wright waffle-iron; *in* that so? A. That is not so.

“Q. With what object in view did you make this [155] specimen?

“A. To show that it could be adapted in the same way that Landers, Frary & Clark made their waffle-iron, which was made before we knew there was such a patent as the Wright patent.

“Mr. LYON.—I move to strike out the statement ‘before we knew there was such a patent as the Wright patent,’ as not responsive.”

Mr. L. S. LYON.—Now, the question merely was, “With what object in view did you make this specimen?” referring to the Capek patent; and the answer was, “To show that it could be adapted in the same way that Landers, Frary & Clark made their waffle-iron. We do not object to the answer that far. And then he adds: “Which was made before we knew there was such a patent as the Wright patent.” Now, that don’t refer to anything in the question at all, and it is objected to as not responsive, and we ask it be stricken out on that ground. The question has nothing to do with the time when they made their waffle-iron, at all, whether it was made before or after the Wright patent, or anything else of that kind.

The COURT.—I will hear from you, Mr. Bartlett.

Mr. BARTLETT.—The question opened up to the witness, of course, a comparison of devices. “Q. For what object did you make this specimen?” Now, his complete object, he says, was to show it could be adapted the same way we adapted it. When? Before we ever heard of the Wright patent. To make this fully responsive, and clearly responsive, as carrying out what was in the witness’ mind, [156] of why he made this model.

The COURT.—I will sustain the motion.

Mr. BARTLETT.—The motion to strike out?

The COURT.—Yes, sir.

Mr. BARTLETT.—Very well; that is stricken out. Perhaps we better make it clear on the record, had we?

The COURT.—Oh, I think the record will be straight.

Mr. BARTLETT.—All right, then. Well, on redirect:

“Q. In answer to one of the questions asked you on cross-examination, you said that Landers, Frary & Clark had begun work on their waffle-iron before you had any knowledge of the Wright patent.

(Objected to as not proper redirect examination, and as immaterial.)

“A. Yes, sir.”

We claim that question and answer. Undoubtedly counsel thought, if there was an objection there, he ought to put a direct question to have the point covered, and he put the question, and the witness’ answer was, “Yes.” If it is immaterial, it might

have stayed in, the other answer. The fact it was stricken out shows it may be material, so we claim it, if your Honor pleases.

Mr. L. S. LYON.—The principal objection is that it is not proper redirect examination. There is nothing stands in the cross-examination in any way referring to when the witness made this iron, whether it was gotten up before or after he knew about the Wright patent.

The COURT.—Are you making your motion now to strike that out? [157]

Mr. L. S. LYON.—Yes.

The COURT.—Read the question again.

Mr. BARTLETT.—(Reading:)

“Q. In answer to one of the questions asked you on cross-examination, you said that Landers, Frary & Clark had begun their work on their waffle-iron before you had any knowledge of the Wright patent.

“(Objected to as not proper redirect examination, and as immaterial.)

“A. Yes, sir.”

Mr. L. S. LYON.—Now, the first objection is on the ground that it is not redirect examination. The second objection is that it is immaterial, because it is the witness' testimony as to what he testified about at another time, and don't state a fact. It just says, “In answer to one of the questions you said so-and-so.” Now, that answer has been stricken out.

The COURT.—I think that brings it in. I will overrule your motion.

Mr. L. S. LYON.—The second objection is on the ground it is immaterial, because it don't state a fact. It just states what he testified to at some other time.

The COURT.—The ordinary man will understand that to be a repetition of what he had previously testified to.

Mr. L. S. LYON.—Exception.

Mr. BARTLETT.—It is only a repetition as to that line of manufacture, which I have already explained to your Honor that he testified about preceding, except it will [158] make it pretty clear, if you will just pardon a question and answer:

“Q. Do you know of any other manufacturer of electric cooking utensils who, prior to the entry of Landers, Frary & Clark in the field, made their utensils with an enclosing shell or casing, upon the upper edge of which rested the cooking surface?

“A. There was some few exceptions, but in percolators, chafing-dishes, and things of that kind, those utensils were made by people who made the regular household utensils, and the electric stove was attached to the bottom, without a casing. In the original development of our line, we made all of our utensils with a base to enclose the electric stove or heating unit, where the others had left it exposed.

“Q. And it was on the upper edge of such a base that the cooking surface was mounted, was it? A. It was.

“Q. Prior to the manufacture of the electrical heating utensils, such as percolators, chafing-dishes, stoves, etc., by Landers, Frary & Clark, I understood you to testify on cross-examination, that they made a complete line of such articles, heated by alcohol lamps, and the like; is that correct? A. It is.

“Q. Please say how your waffle-iron differs from your stove, Exhibits 8 and 9, in respect to that feature of the waffle-iron where the baking surface extends over and rests upon the upper edge of the casing.

“(Objected to as irrelevant, and that the questions of comparison and difference are matters for the court. The witness can only testify as to the facts.)

“A. I consider they are practically the same.”

It strikes me that that is a question of fact: “Please say how your waffle-iron differs, in fact, from your stove.”

The COURT.—I understand it is calling for an opinion of the witness, as sort of expert testimony. [159]

Mr. L. S. LYON.—Well, I didn’t know a witness could testify whether he thought two things, when they were obviously different, were in fact the same. I thought he could testify that this part had this, and this part had that, and this one worked this way, and this one worked that way; but to ask him whether he thinks they are different, or the same, I don’t think that is evidence at all. I don’t think

an expert can give his opinion on the ultimate issues in the case. He can give his opinion on how a thing works, or how it is made, but not take a device, or two devices, and say, "These are the same." If that was so, a witness could take an infringing device and testify it was the same as the patented device, which I know this Court has held is improper.

Mr. BARTLETT.—If your Honor please, a moment?

The COURT.—Yes.

Mr. BARTLETT.—(Reading:) "Please say how your waffle-iron differs from your stove, Exhibits 8 and 9, in respect to that feature of the waffle-iron where the baking surface extends over and rests upon the upper edge of the casing,"—not a construction of the language of the patent, or any claim of the patent, but, "Your waffle-iron, how does it differ from your stove is respect to that feature?"

Mr. F. S. LYON.—In the interpretation—

Mr. BARTLETT.—Just a moment, please. [160]

The COURT.—Mr. Lyon, can't you wait?

Mr. F. S. LYON.—I thought counsel was through.

The COURT.—You butted in here three or four times while he was talking.

Mr. BARTLETT.—I was only about to add that it seems clearly a question of just a fact, from a man who manufactured it himself, as to that projecting edge. Now, whether it is the projecting edge of the Claims, or the projecting edge of Mr. Wright's invention, it is for the Court to determine.

But, as a matter of fact, he says he considers the projecting edge of the stove the same, in fact, as the projecting edge of his waffle-iron. It seems as though it is a perfectly fair question, and a very pertinent answer, and I would like to claim it.

Mr. F. S. LYON.—On the interpretation that counsel has attempted to put upon the answer at the present time, we urge the further objection that the answer is not responsive. The question is, how a thing differs, and the answer just simply is a conclusion that they are substantially the same, and is not a statement of any difference. The question asked him to point out the difference.

Mr. L. S. LYON.—And it is not a statement of fact.

The COURT.—Let me take the deposition, will you, please?

Mr. BARTLETT.—Yes, your Honor. Question 165. [161]

The COURT.—Well, this is the question now: "Please say how your waffle-iron differs from your stove, Exhibits 8 and 9, in respect to that feature of the waffle-iron where the baking surface extends over and rests upon the upper edge of the casing." Now, that is calling for a fact. If there is any difference, he is called upon to explain, and he simply says there is no difference, it is the same thing. That is his opinion as a witness. I will overrule the objection.

Mr. BARTLETT.—The objection is overruled, Mr. Lyon.

Mr. L. S. LYON.—Exception.

Mr. BARTLETT.—(Reading:)

“Q. And the characteristics and advantages of aluminum as cooking surfaces were well known to Landers, Frary & Clark at that time?

“Objected to as irrelevant and immaterial.

“A. They were.”

I don't care whether it is in or out. Now, on recross-examination—well, that was read by my friend, what he desired.

That brings us to the iron, which obviously is not disputed, and we need not spend any time on, except—pardon me, may I step here with this?

The COURT.—Yes.

Mr. BARTLETT.—As you will remember, most of the waffle-irons that we have been acquainted with are found in shape, because stove-holes are round, and they had to fit over the stove-holes. The only point, of course, [162] of this, which is not electrically heated, was to show the use and advantages of aluminum as a waffle surface, long prior to any disclosure by Mr. Wright. And it happens, while this is not an evidentiary part of the exhibit, the tag that was on it when it was introduced says, “It is not necessary to grease the aluminum griddle to keep the cakes from sticking.” That is a fact that is inherent in the aluminum as metal, whether Mr. Wright states it, or the tag states it, or the defendant.

The COURT.—If you grease it, doesn't it spoil it?

Mr. BARTLETT.—No, it does not spoil it.

Mr. F. S. LYON.—You have to burn it off before you can use it, without greasing, after that; isn't that correct, Mr. Bartlett? If you grease it once, you have to continue greasing, or burn it all off, one or the two, before you start over again, without greasing.

Mr. BARTLETT.—If you will pardon me, this explains it. You can't get along without greasing aluminum, unless you have your heat just so. If they are in Mr. Wright's, or anybody else's, if that is too hot, they will stick. If it is brought up gradually, and there is this gradual heat, then you can get on. And you will notice Mr. Wright testified, "It won't stick if your heat is right," or to that effect.

That is a very immaterial point, anyway,—whether it will stick or not. Aluminum is, in itself, time out of [163] mind, old—I mean, with relation to this patent—for cooking purposes; and this was put in, of course, to meet the proposition that there was any patentable novelty at that time in having the waffle surface made of aluminum.

The COURT.—Well, this is a combination patent, and I presume all the elements are old; it is simply a question whether it is in a combination that is patentable.

Mr. BARTLETT.—Precisely. We only want to show that the element aluminum does not in itself add novelty to that combination. If the combination is new, it is only an adjunct in the description of the element, at most.

Mr. F. S. LYON.—Mr. Bartlett, in order that

the Court may understand this waffle-iron catalog you have there, I believe it is our stipulation it has been on the market all the time during the last twenty years. Is that correct—approximately that, anyway?

Mr. BARTLETT.—Waffle-irons had been manufactured and sold in the market in the United States prior to the earliest date of invention which may be claimed on behalf of the patentee of the patent here in suit. That is the stipulation.

Now, we do not need to read the deposition proving the Simplex. Your Honor will pardon me just a moment?

The COURT.—Yes.

Mr. BARTLETT.—My colleague, Mr. Blakeslee, says the depositions state the construction of the Simplex iron. [164] I do not think we have any controversy between us that they have electric heating elements in each side.

Mr. F. S. LYON.—You mean by the simplex iron—

Mr. BARTLETT.—This one (indicating).

Mr. F. S. LYON.—No; we understand each one of those contains a heating element inside, each side.

Mr. BARTLETT.—There is no controversy between us as to that.

Mr. F. S. LYON.—No, not that I know of.

Mr. BARTLETT.—The defendant rests.

Mr. L. S. LYON.—Mr. Bartlett, there are some catalogs to go with this iron.

Mr. BARTLETT.—Oh, yes.

Mr. L. S. LYON.—I suppose you want to attach those?

Mr. BARTLETT.—Well, they have been laid in as part of the deposition.

Mr. L. S. LYON.—Well, I can't find them.

Mr. BARTLETT.—Well, I have got them here.

Mr. L. S. LYON.—There is one about that aluminum waffle-iron.

Mr. BARTLETT.—There are those, there is the aluminum waffle-iron, and there is the other (producing catalogs).

Mr. L. S. LYON.—There was another one on the aluminum waffle-iron here, too, somewhere.

Mr. BARTLETT.—No.

Mr. L. S. LYON.—This is No. 20, and here is No. 21. [165] Oh, no.

Mr. BARTLETT.—While you are looking, will you pardon me if I dictate the introduction of those exhibits, to get our proofs in sequence?

The COURT.—Proceed.

Mr. BARTLETT.—Counsel for defendant offers in evidence Landers, Frary & Clark catalog of electrically-heated articles, and the same is marked Defendant's Exhibit No. 24.

(The document so offered and received in evidence was marked Defendant's Exhibit No. 24).

Mr. BARTLETT.—Counsel for defendant also offers in evidence catalog of Landers, Frary & Clark, showing electrically-heated utensils, and the same is marked Defendant's Exhibit No. 25.

(The document so offered and received in evidence was marked Defendant's Exhibit No. 25.)

Mr. BARTLETT.—Counsel for defendant also offers in evidence one of defendant's waffle-irons—

The COURT.—Those are already in, are they not?

Mr. BARTLETT.—It was let in, but it was not put in in form in the record, to get its number.

Counsel for defendant also offers in evidence one of Landers, Frary & Clark's waffle-irons, with the upper waffle member cut, to show the interior construction, and the same is marked Defendant's Exhibit No. 26. [166]

(The device so offered and received in evidence was marked Defendant's Exhibit No. 26.)

Mr. BARTLETT.—We rest.

Mr. L. S. LYON.—We have no rebuttal.

Mr. F. S. LYON.—Plaintiff rests.

(Testimony closed.) [167]

(Title of Court and Cause.)

State of California,

County of Los Angeles,—ss.

I, W. C. Wren, do hereby certify that the foregoing is a true, correct and complete copy of the testimony and proceedings adduced at the trial of the cause known in the District Court, Southern District of California, Southern Division, as William D. Wright, Plaintiff-Appellee, vs. Pacific States Electric Co., Defendant-Appellant, and all those portions thereof set forth and specified in the stipulation as to transcript of record on appeal, and exhibits, and order thereon, on file in said cause; and all such testimony and proceedings are so re-

produced in the foregoing copy in the exact form reported.

And I further certify that I am the reporter who reported the proceedings on the trial of said cause.

W. C. WREN,

Shorthand Reporter.

Dated Los Angeles, Cal., June 20, 1921. [168]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. D-68.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC COMPANY,

Defendant.

Petition to Reopen Case, etc., and Notice Thereof.

Please take notice on Monday, January 3, 1921, at the hour of ten o'clock A. M., or as soon thereafter as counsel can be heard, and in the courtroom of the Honorable Oscar A. Trippet, Judge of this court, and in the Federal Building, Los Angeles, California, the defendant herein will by counsel petition this Honorable Court for an order permitting this cause to be reopened for the purpose of amplifying the proofs with respect to the prior art by the offer and receipt in evidence of the attached copy of British patent No. 10,015, to Crompton of 1893, for Improvements in Apparatus for use in the

Utilization of Electrical Energy for Culinary Purposes; and that such exposition or elucidation or argument with respect thereto may be made by counsel for the parties hereto as the Court may desire or deem necessary, and for such further procedure in the premises and with respect to said British patent as the Court may be pleased to require or permit or as may seem necessary; and that this Honorable Court will be further petitioned at that time and place for permission to file in this cause said copy of said British letters patent, or a copy of a copy thereof, from the records and files of, and duly certified by, the United States Commissioner of Patents; and this Honorable [169] Court will be further then and there petitioned to withhold any decision as to the merits of this cause until due consideration has been given to said British patent.

This petition will be based upon the records, files, papers, proofs, proceedings and arguments heretofore made and had and on file in this cause, and upon the annexed affidavit of Raymond Ives Blakeslee.

JOHN P. BARTLETT,
RAYMOND IVES BLAKESLEE,
H. E. HART,
LUCIUS P. GREEN,

Solicitors and of Counsel for Defendant. [170]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. D-68.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC COMPANY,

Defendant.

Affidavit of Raymond Ives Blakeslee.

State of California,

County of Los Angeles,—ss.

Raymond Ives Blakeslee, being duly sworn, says: That he is a solicitor and of counsel for defendant in the above-entitled cause and took part on behalf of defendant in the trial and argument thereof; that he has carefully examined the attached copy of British patent of 1893 to Crompton, and is of the true and certain opinion that the disclosure of the same fairly comprises two members each having a casing, said casings being hinged or pivoted together or adapted to be so hinged or pivoted together, or intended to be so pivoted or hinged together if desired, said casings being provided with electrically heated elements of rough or uneven surfaces between which the food or material to be cooked is to be placed; that one of said heated elements is disclosed to have a flange overlapping the edge of the casing; that said casings are shown to be substantially rectangular; that such Crompton

patent device is clearly adapted for the making of waffles or of making cakes or other batter products having indented or patterned surfaces; that electrical [171] *resistance* elements are clearly shown in said Crompton patent for heating said heated elements and the same are shown in insulating means to insulate them from the casings; that affiant is of the full opinion that the Wright patent as to the claims in suit does not disclose any subject matter involving invention in any respect over the disclosures of such Crompton patent, and particularly in view of the well-known use of *aluminum* for waffle-iron heated surfaces as shown in the Griswold waffle-iron in evidence, the use of which material under the law is open to the adoption of any person, and over the hinged casings and other parts of the Simplex waffle-iron in evidence; that defendant's device is obviously much closer in construction and mode of operation to the disclosure of the said Crompton patent than it is to the disclosure of the Wright patent in suit; that the first knowledge affiant had or received of this Crompton patent was by a telegram received by Mr. Bartlett from counsel Hart, for defendant, in Connecticut, during the trial of this cause and referring to the patent; that defendant's counsel made diligent effort at that time to inspect a copy of such British patent but could not find same in the libraries of either Los Angeles, San Francisco or Berkeley, California, although diligent attempt was made to locate such copy in said cities; that the first time affiant was able to inspect said copy of said Crompton patent

was when same was received at affiant's office during the week succeeding the trial of this cause; that affiant thereupon wired counsel Bartlett in this cause, he having then left for New York City, and that counsel Bartlett replied under date of December 23, 1920, stating that he had not seen a copy of said Crompton patent but stating that said copy of said Crompton patent attached hereto came to said counsel Hart the day he wired Los Angeles and so came to said counsel Hart through citation [172] by the British Patent Office in some pending case; that said counsel Bartlett likewise wired under said date last mentioned that he had ordered a certified copy of said Crompton patent from the United States Patent Office, the same to be forwarded to affiant; and that same should arrive in Los Angeles in the due course of the business of the Patent Office, plus the period required for transmission by mail.

That affiant has been diligent in presenting this matter to this Honorable Court and would have presented the same this present day but has been advised that the Honorable Oscar A. Trippet, Judge of this Court, is not to hold Court this day and will probably not be in Court or in Chambers during the ensuing week; that affiant was so advised as last stated by the office of the clerk of this court; and affiant further submits that the discovery of this British patent, even if a copy of same might be present in the United States Patent Office files, could not reasonably have been made upon the ordinary search inasmuch as copies of foreign letters

patent are not within the classified files of the Patent Office, but, as affiant is informed and believes, are only retained in the files of the several Examiners of the Patent Office and that a search for same might well have been futile, due to the complicated and overlapping classifications of inventions in the Patent Office and distribution of the applications for patents for inventions throughout the many divisions of the Patent Office; and affiant further submits that irrespective of any possible avoidable delay in the discovery of this British patent the same within equity and that justice may be done, both to defendant and the public at large, should within all propriety be brought to the attention of and duly considered by this Honorable Court in connection with the determination of this cause and rendition of decision herein, all subject to such [173] proper and just terms or costs, if any, as this Honorable Court may deem proper to impose.

RAYMOND IVES BLAKESLEE.

Subscribed and sworn to before me this 27th day of December, 1920.

[Seal]

MILDRED LEACH,

Notary Public in and for the County of Los Angeles,
State of California. [174]

[Endorsed]: In Equity—No. D-68. In the United States District Court, Southern District of California, Southern Division. William D. Wright, Plaintiff, vs. Pacific States Electric Co., Defendant. Petition to Reopen Case, etc., and Notice Thereof. Received copies of within petition and notice and affidavit and patent copy this 27th day of December,

1920. ———, Solrs. for Pltff. Received copies of the within papers this 27th day of December, 1920. Frederick S. Lyon, Leonard S. Lyon, Solrs. for Plaintiff. Filed Dec. 28, 1920. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. Raymond Ives Blakeslee, 726-30 California Building, Los Angeles, Cal., Solicitors for Defendant.
[175]

[Second Edition.]

No. 10,015—A. D. 1893

Date of Application, 19th May, 1893

Complete Specification Left, 19th Feb., 1894—Accepted, 24th Mar., 1894

PROVISIONAL SPECIFICATION.

Improvements in Apparatus for Use in the Utilization of Electrical Energy for Culinary Purposes.

We ROOKES EVELYN BELL CROMPTON, Engineer, and HERBERT JOHN DOWSING, Engineer, both of Mansion House Buildings in the City of London do hereby declare the nature of this invention to be as follows:—

In the utilization of electrical energy for the production and application of heat for culinary purposes, such as grilling or broiling meat, toasting bread, grilling slices of pudding and for similar purposes, we find that if we bring these substances in direct contact with plain flat electrically heated surfaces, unsatisfactory results are obtained, as the steam or moisture imprisoned in the pores of the substance to be cooked does not get free exit, and the result is that the cooked product is sodden, heavy, and unpalatable. In order to meet this difficulty we cut or form grooves in our flat surfaces, or we roughen these surfaces by a series of projections or prominences placed sufficiently near together to directly impart the heat to the material we desire to cook and at the same time to allow sufficient spaces between the prominences to allow of escape of the steam or moisture.

In some cases we prefer to use two directly heated surfaces both of which may be formed as above, in other cases we employ one directly heated surface formed as above and a second plate or pressure plate also formed as above which need not be directly heated. In other cases we may only use one such heating surface.

We do not confine our present invention to any special form of electrically heated plate but apply it as a method of giving the correct form of surface for the above mentioned objects to any form of electrically heated plate used for culinary purposes as we find by these means that excellent results both as regards the grilling or broiling of meat and toasting of bread or slices of pudding can be obtained. In the case of the grilling of meat where the juices contained in the meat are considerable in extent, we sometimes consider it necessary to form the grooves by which the juice can escape from the underside of the meat larger than those necessary for toasting bread or materials which do not contain so much moisture.

Dated this 19th day of May 1893.

WM. BROOKES & SON.

55 & 56, Chancery Lane, London, Agents for the Applicants.

COMPLETE SPECIFICATION.

Improvements in Apparatus for Use in the Utilization of Electrical Energy for Culinary Purposes.

We ROOKES EVELYN BELL CROMPTON Engineer, and HERBERT JOHN DOWSING Engineer, both of Mansion House Buildings in the City of London, do hereby declare the nature of this invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement:—

In the utilization of electrical energy for the production and application of heat for culinary purposes such as grilling or broiling meat, toasting bread, grilling slices of pudding and for similar purposes, we find that if we bring these

Apparatus for Use in the Utilization of Electrical Energy for Culinary Purposes.

substances in direct contact with plain flat electrically heated surfaces, unsatisfactory results are obtained, as the steam or moisture imprisoned in the pores of the substance to be cooked does not get free exit, and the result is that the cooked product is sodden, heavy and unpalatable. In order to meet this difficulty we cut or form grooves in our flat surfaces, or we roughen these surfaces by a series of projections or prominences placed sufficiently near together to directly impart the heat to the material we desire to cook and at the same time to allow sufficient spaces between the prominences to allow of escape of the steam or moisture. In some cases we prefer to use two directly heated surfaces both of which may be formed as above, in other cases we employ one directly heated surface formed as above and a second plate or pressure plate also formed as above which need not be directly heated. In other cases we may only use one such heating surface.

We do not confine our present invention to any special form of electrically heated plate but apply it as a method of giving the correct form of surface for the above mentioned objects to any form of electrically heated plate used for culinary purposes as we find by these means that excellent results both as regards the grilling or broiling of meat and toasting of bread or slices of pudding can be obtained.

In the case of the grilling of meat where the juices contained in the meat are considerable in extent, we sometimes consider it necessary to form the grooves by which the juice can escape from the underside of the meat larger than those necessary for toasting bread or materials which do not contain so much moisture.

Fig. 1 shews a front elevation partly in section of such an apparatus for use in grilling meat or like matters and Fig. 2 shews the same in plan view with the heated plate *a* broken away at parts to shew position of the heating circuits embedded in the enamel.

Fig. 3 is an edge view of a lid or cover to be placed over the article being cooked.

Fig. 4 is a portion of the upper surface of such a heating appliance of a pattern particularly adapted for making toast.

Fig. 5 a side view of Fig. 4.

The matters to be grilled or toasted are rested upon the projections or flutes of the plate *a* and the lid *a** is rested thereon.

Any moisture from the cooking matter finds free escape by the channels or interstices between these ridges or projections. The plate *a** may contain enamel locked circuits *b* connected electrically or it may be plain metal and be hinged or loose

Having now particularly described and ascertained the nature of our said invention, and in what manner the same is to be performed, we declare that what we claim is:—

In utilizing electrical energy for culinary purposes,—

1. The manufacture and use of metallic heating surfaces, with enamel backing forming a supporting, fixing and insulating medium for wire or strip conductors of electricity for the purpose of heating said surfaces, and with corrugated, fluted or projecting parts adapted to admit of ready escape of steam or moisture generated, by way of the channels so provided, substantially as and for the purpose set forth.

2. The combination, arrangement and use of parts of an electric heating or toasting apparatus, substantially as and for the purposes set forth.

Dated the 19th day of February, 1894.

WM. BROOKS & SON,

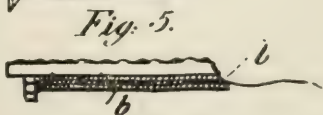
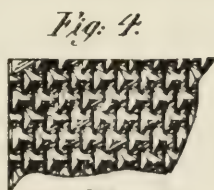
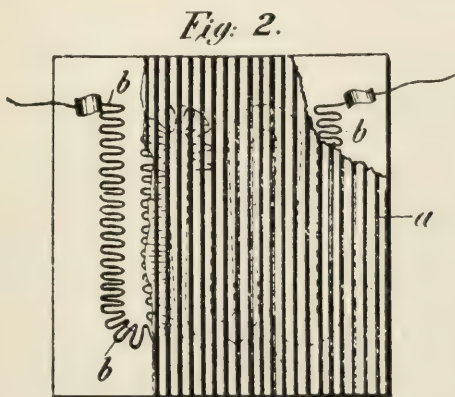
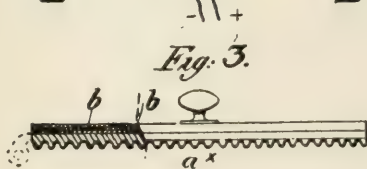
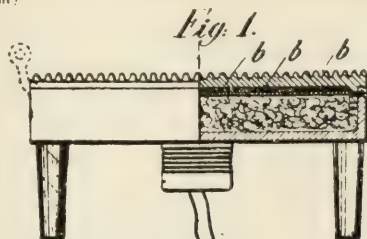
55 & 56, Chancery Lane, London, Agents for the Applicants.

A.D. 1893 MAY 19. N^o. 10,015.

CROMPTON & another's COMPLETE SPECIFICATION.

1 SHEET

2nd Edition



This Drawing is a reproduction of the Original on a reduced scale.

At a stated term, to wit, the January, 1921, Term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the courtroom thereof, in the city of Los Angeles, on Monday, the twenty-fourth day of January, in the year of our Lord one thousand nine hundred and twenty-one—Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. D-68—Eq. S. D.

WM. D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant.

**Minutes of Court — January 24, 1921 — Order
Directing that Patent be Filed, etc.**

This cause coming on this day for hearing of petition to reopen case; F. S. Lyon, Esq., appearing as counsel for plaintiff; R. I. Blakeslee and C. J. Brown, Esq., appearing as counsel for defendant; and R. I. Blakeslee, Esq., of counsel as aforesaid, having argued in support of motion to reopen case; and L. S. Lyon, Esq., of counsel as aforesaid, having replied thereto, it is by the Court ordered that the patent in question be filed, and the defendant to pay to plaintiff the sum of \$50.00. [179]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. D-68.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELEC. CO.,

Defendant.

**Receipt for Terms Imposed by Court Under Order of
January 24, 1921.**

Received from Raymond Ives Blakeslee, Esq., solicitor and counsel for defendant, the sum of fifty dollars (\$50.00), being terms imposed by Court under order of January 24, 1921, on granting of petition of defendant for leave to reopen case and introduce copy of said Crompton patent in evidence.

Dated January 24, 1921.

FREDERICK S. LYON,

LEONARD S. LYON,

Solicitors and Counsel for Plaintiff. [180]

[Endorsed]: No. D-68. United States District Court, Southern District of California, Southern Division. William D. Wright vs. Pac. States Elec. Co. Receipt for Terms. Filed Jan. 25, 1921. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. [181]

United States District Court, Southern District of
California, Southern Division.

IN EQUITY—D-68.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC COMPANY,
Defendant.

Memorandum Opinion.

FREDERICK S. LYON, Esq., and LEONARD S.
LYON, Esq., of Los Angeles, California, for
Plaintiff.

RAYMOND IVES BLAKESLEE, Esq., of Los
Angeles, California, and JOHN P. BART-
LETT, Esq., of New York, for Defendant.

I have made up my mind in this case that the patent of the plaintiff is valid as to the claims in controversy. I think, however, in view of the prior art and the slight advance made in the invention over the prior art, that the claims should be narrowly construed and should be limited to the precise machine described. But the patent should not be limited to the grill member as claimed in the claims previous to claim six.

Having reached the conclusion that the patent should be upheld, the next question is to determine whether or not there is infringement. The chief argument of the defendant, both orally and in its brief, is to the effect that the claims of the patent

must be so limited as not to include defendant's device, and states:

“Those claims must be construed in view of the drawings and specification of the patent in suit. Those drawings and that specification show means and ways of construction and mode of operation that are different from the means and ways of construction and mode of operation of defendant's device.

In the waffle-irons of the Wright Patent in [182] suit the casings are the peculiar and dominant features. They are made and operate like metal boxes bottoms down and covers off. Into these metal boxes, as containers, and supports, Wright places in the order he names and from the bottom of the box upward, first, a layer of insulating material, then, the wire to be electrically heated, then, another layer of insulating material, and then, on top of these, the waffle-iron itself with its edges projecting over the edges of the box. That was the Wright conception of the way to make an electrically heated waffle-iron, use a box as a box and place in the box the parts enumerated and in the order stated.

In the defendant's device that is not the construction and mode of operation. In defendant's device the dominant feature is the heated or waffled surface itself. On to the bottom of this is fastened by a clamping metal plate the insulating material and the wire to be electrically heated. Legs or supports could be directly at-

tached to the waffle-iron itself and the device would function and operate. But, as a finishing, a screen or cover is provided, which does not 'contain,' in the sense of the Wright patent, the parts, but screens or covers the parts and provides an air space below the clamping plate and electrical unit."

I do not agree with this argument of the defendant. The boxes are specifically claimed by plaintiff. Now, if the defendant is of the opinion that these boxes are but a finishing, a screen or cover, it seems to the Court that the defendant might devise something else. It is true as claimed by the defendant that its electrical attachment is fastened to the waffle-irons by screws instead of being contained in a box, but the plaintiff's device is attached to the waffle-irons, and necessarily so, but not in the same way. The defendant's device being in every way the same as that claimed by the plaintiff in his last four claims, the mere difference in the construction of the electrical appliance or attachment as above stated does not avoid infringement.

The plaintiff will draw a decree and follow Rule 45.

Dated March 14, 1921.

TRIPPET,
Judge. [183]

[Endorsed]: Original. No. D-68—In Equity. U. S. District Court, Southern District of California (Southern Division). William D. Wright, Plaintiff, vs. Pacific States Electric Co., Defendant. Memorandum. Filed Mar. 17, 1921. Chas. N. Williams, Clerk. Fred E. Subith, Deputy. [184]

At a stated term, to wit, the January, 1921, Term, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the courtroom thereof, in the city of Los Angeles, on Saturday, the second day of April, in the year of our Lord one thousand nine hundred and twenty-one—Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. D.-68—EQUITY.

WM. D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant.

**Minutes of Court—April 2, 1921—Order Directing
Filing of Interlocutory Decree.**

An interlocutory decree in the above-entitled cause having this day been presented to the Court for its signature, and by the Court signed, and ordered filed, and entered herein; and said interlocutory decree as so signed, being as follows, to wit:

United States District Court, Southern District of
California, Southern Division.

No. EQUITY—No. D-68.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant.

Interlocutory Decree.

This cause having come on to be heard and having been argued by counsel; now, therefore, upon consideration thereof, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows, viz.:

1. That United States Letters Patent No. 1,214,486, issued January 30, 1917, to William D. Wright, plaintiff, are good and valid in law as to claims 6, 7, 8, and 9 thereof, and that [185] claims 1, 2, 3, 4 and 5 thereof are not involved in this cause.

II. That the plaintiff is the owner of said letters patent.

III. That the defendant has infringed claims 6, 7, 8 and 9 of said letters patent by selling devices like Plaintiff's Exhibit 2 herein.

IV. That said infringing devices like Plaintiff's Exhibit 2 herein have been manufactured by Landers, Frary & Clark, a corporation, of New Britain, Connecticut; that said Landers, Frary & Clark, has conducted, and controlled the defense of this suit and is the real defendant in interest therein.

V. That an injunction be issued against defendant Pacific States Electric Co. perpetually enjoining and restraining it, its officers, agents, attorneys, servants, employees and associates, and each and every of them, from hereafter selling or causing to be sold in any manner, directly or indirectly, any devices like Plaintiff's Exhibit 2 herein or any device containing or embodying the invention patented in or by claims 6, 7, 8 and 9 or either thereof

said letters patent or any device capable of being used in infringement thereof, and from directly or indirectly infringing upon either or any of claims 6, 7, 8 and 9 of said letters patent in any manner whatsoever.

VI. That plaintiff recover from defendant Pacific States Electric Co. the profits and damages received from said defendant's infringement of said letters patent.

VII. That an accounting be had to determine the profits and damages received from the infringement by said defendant.

VIII. That this cause be referred to _____, Esq., as master *pro hac vice* to ascertain such profits and damages and report the same to the Court; and that the matter of increased damages be deferred until after the master's report is returned.

IX. That plaintiff have and recover judgment against defendant [186] Pacific States Electric Co. for the sum of \$137.10 plaintiff's costs and disbursements herein.

Dated April 2, 1921.

TRIPPET,
District Judge.

Approved as to form pursuant to Court Rule 45.

JOHN R. BARTLETT,
RAYMOND IVES BLAKESLEE,
Solicitors for Defendant.

Decree entered and recorded April 2, 1921.

CHAS. N. WILLIAMS,
Clerk.

Fred E. Subith,
Deputy Clerk.

An assignment of errors and a petition for appeal from the interlocutory decree granted herein having been presented and filed in open court by Raymond Ives Blakeslee, attorney for defendant, an order allowing said appeal to the Circuit Court of Appeals for the Ninth Circuit is now signed and filed in open court. [187]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—D-68.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant.

Stipulation for Order Staying Costs and Disbursements Judgment, Accounting and Injunction, Until Supersedeas Bond Filed, Pursuant to Order Signed April 2, 1921.

It is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled cause that an order may be made staying execution of any judgment for costs of this court, staying accounting and staying issuing of injunction, all pursuant to order of this court signed April 2, 1921, providing for supersedeas in these respects, until the filing by defendant of supersedeas bond as provided in said order.

Dated Los Angeles, Cal., April 2, 1921.

FREDERICK S. LYON,

LEONARD S. LYON,

Solicitors and Counsel for Plaintiff.

RAYMOND IVES BLAKESLEE,

JOHN P. BARTLETT,

Solicitors and Counsel for Defendant.

It is so ordered.

BLEDSON,

District Judge. [188]

[Endorsed]: In Equity—No. D-68. In the United States District Court, Southern District of California, Southern Division. William D. Wright, Plaintiff, vs. Pacific States Electric Co., Defendant. Stipulation for Order Staying Costs and Disbursements Judgment, Accounting and Injunction, Until Supersedeas Bond Filed, Pursuant to Order Signed April 2, 1921. Filed Apr. 4, 1921. Chas. N. Williams, Clerk. Fred E. Subith, Deputy. Raymond Ives Blakeslee, 727-30 California Building, Los Angeles, Cal., Solicitor for Defendant. [189]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No.D-68.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant.

**Stipulation Regarding Filing and Obtaining
Approval of Appeal and Supersedeas Bond.**

Inasmuch as unavoidable delay has been caused in obtaining the figures of sales for the verified statement required to be filed herein as a basis for calculating amount of defendant's appeal and supersedeas bond, and as the Honorable Judge who allowed the appeal of defendant herein is absent from the city, it is hereby stipulated and agreed that if defendant will file the verified statement referred to this day, that the said bond shall be deemed approved and filed within proper time for all purposes and respects in this case, if approved by said Honorable Judge and filed on or before the 10th day of May, 1921.

Dated Los Angeles, Cal., April 22, 1921.

FREDERICK S. LYON,
LEONARD S. LYON,

Solicitors and Counsel for Plaintiff.

JOHN P. BARTLETT,

RAYMOND IVES BLAKESLEE,

Solicitors and Counsel for Defendant. [190]

[Endorsed]: In Equity—No. D-68. In the United States District Court, Southern District of California, Southern Division. William D. Wright, Plaintiff, vs. Pacific States Electric Co., Defendant. Stipulation Regarding Filing and Obtaining Approval of Appeal and Supersedeas Bond. Received copy of within this 22d day of April, 1921. Frederick S. Lyon, Leonard S. Lyon, Attorneys for Plaintiff. Filed Apr. 22, 1921. Chas. N. Williams, Clerk. By P. W. Kerr, Deputy Clerk. Raymond

Ives Blakeslee, 727-30 California Building, Los Angeles, Cal., Solicitor for Defendant. [191]

United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. —.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC COMPANY,
Defendant.

**Interrogatories Addressed to William D. Wright,
Plaintiff.**

Interrogatory 1. State what claim or claims of the patent in suit plaintiff charges that defendant has infringed.

Interrogatory 2. With respect of each claim relied upon, what is the earliest date of invention plaintiff will claim.

Interrogatory 3. State by name and catalog number, or other identifying mark, what article of defendant's manufacture is claimed as the infringing structure.

PACIFIC STATES ELECTRIC CO.,

By H. E. HART,

Counsel.

LUCIUS P. GREEN,

Solicitor. [192]

[Endorsed]: D-68. United States District Court, Southern Dist. of California, Southern Division. In

Equity—No. ——. William D. Wright, Plaintiff, vs. Pacific States Electric Co., Defendant. Interrogatories. Filed Jul. 3, 1918. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. Law Offices of Harrie E. Hart, Hartford, Conn., Connecticut Mutual Bldg. [193]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. D.-68.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant.

Petition for Appeal.

The defendant above named in the above-entitled suit conceiving itself aggrieved by the interlocutory decree made and entered in the above-entitled suit, April 2, 1921, granting an injunction as in said interlocutory decree set forth, against defendant, comes now by John P. Bartlett and Raymond Ives Blakeslee, its solicitors and counsel, and petitions said Court for an order allowing defendant to prosecute an appeal from said Interlocutory Decree to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also for an order fixing the sum of security which defendant shall give and furnish upon said appeal, the same to operate as a super-

sedeas of and to suspend the issuance of an injunction ordered by said interlocutory decree, and as a supersedeas of the judgment for costs and disbursements provided for in said interlocutory decree, and to operate as a supersedeas of and to suspend the accounting of damages and profits provided for in said interlocutory decree, all pending the determination of said appeal, by said United States Circuit Court of Appeals for the Ninth Circuit, and any appeal thereafter allowed and taken to the Supreme Court of the United States.

JOHN P. BARTLETT,

RAYMOND IVES BLAKESLEE,

Solicitors for Defendant. [194]

[Endorsed]: No. D-68—In Equity. In the United States District Court, Southern District of California, Southern Division. William D. Wright, Plaintiff, vs. Pacific States Electric Co., Defendant. Petition for Appeal. Filed Apr. 2, 1921. Chas. N. Williams, Clerk. Fred E. Subith, Deputy. Raymond Ives Blakeslee, 727-30 California Building, Los Angeles, Cal., Solicitor for Defendant. [195]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. D-68.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant.

Assignments of Errors.

Comes now defendant above named, and specifies and assigns the following as the errors upon which it will rely upon its appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the interlocutory decree of April 2, 1921, granting an injunction against defendant as in said interlocutory decree set forth; that said District Court of the United States for the Southern District of California, Southern Division, in making and entering said Decree erred as follows:

1. In adjudging and decreeing that claims 6, 7, 8 and 9 of the Wright patent in suit No. 1,214,486, or said patent in any respect, is or are good and valid in law or in any respect.

2. In adjudging and decreeing that said patent or any claims thereof has been or is infringed by defendant in any manner whatsoever, as referred to in paragraph 3 of said interlocutory decree, or in any manner or by any device sold by defendant.

3. In not adjudging and decreeing that said Wright letters patent and claims 6, 7, 8 and 9 thereof are void.

4. In not adjudging and decreeing that defendant has not infringed upon said Wright patent in suit or the claims thereof [196] in any manner whatsoever.

5. In not ordering, adjudging and decreeing that the bill of complaint in said cause be dismissed with costs and disbursements to defendant.

6. In not ordering, adjudging and decreeing that said Wright letters patent in suit and claims 6, 7, 8

and 9 thereof, were void for want of invention.

7. In not ordering, adjudging and decreeing that said Wright letters patent in suit and claims 6, 7, 8 and 9 thereof, were void because anticipated, that is, for want of novelty.

8. In not ordering, adjudging and decreeing that said claims 6, 7, 8 and 9 of said Wright letters patent in suit are void for inoperativeness.

9. In not ordering, adjudging and decreeing that said Wright letters patent in suit and claims 6, 7, 8 and 9 thereof are void because the subjects of same are not disclosed in the specification and not disclosed in the drawings of said Wright letters patent in suit as required by section 4888 United States Revised Statutes.

10. In not ordering, adjudging and decreeing that the subjects of claims 6, 7, 8 and 9 are void as being the results of mere mechanical skill, when viewed in the light of devices and things of which the public had general knowledge and as to which publication had been made prior to the pretended date of the pretended invention of said Wright letters patent in suit.

11. In ordering, adjudging and decreeing that defendant be restrained and enjoined either as set forth in paragraph 5 of said interlocutory decree or otherwise, or at all.

12. In ordering adjudging and decreeing that plaintiff recover from the defendant any profits or damages received from said defendant's infringement or said Wright letters patent [197] and in ordering any accounting to that end.

13. In ordering, adjudging and decreeing that plaintiff have and recover from the defendant plaintiff's costs and disbursements in said cause.

14. In ordering, adjudging and decreeing that the plaintiff is the owner of said Wright letters patent in suit.

In order that the foregoing assignments of error may be and appear of record, defendant presents the same to the Court and prays that such disposition may be made thereof as is in accordance with the laws of the United States.

WHEREFORE, the said defendant prays that the said interlocutory decree of this Court made and entered on April 2, 1921, and the injunction thereby granted and ordered, be reversed and set aside, in each and every particular and respect, and the said Court be directed to enter a decree ordering and adjudging the said Wright letters patent to be void and not to have been infringed by this defendant, and that the bill of complaint in this cause be dismissed at the cost and expense of plaintiff, and for such other and further relief and such further proceedings in this court as by the Honorable United States Circuit Court of Appeals for the Ninth Circuit may be found meet and proper and may be ordered.

All of which is respectfully submitted.

JOHN P. BARTLETT,

RAYMOND IVES BLAKESLEE,

Solicitors and Counsel for Defendant. [198]

[Endorsed]: No. D-68—In Equity. In the United States District Court, Southern District of Cali-

fornia, Southern Division. William D. Wright, Plaintiff, vs. Pacific States Electric Co., Defendant. Assignments of Errors. Filed Apr. 2, 1921. Chas. N. Williams, Clerk. Fred E. Subith, Deputy. Raymond Ives Blakeslee, 727-30 California Building, Los Angeles, Cal., Solicitor for Defendant. [199]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. D-68.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant.

**Order Allowing Appeal and Fixing Amount of Bond
and Providing for Supersedeas.**

In the above-entitled suit above-named defendant having filed its petition for an order allowing an appeal from the interlocutory decree of this Court made and entered in this suit on April 2, 1921, granting an injunction against defendant, together with assignments of error:

Now, on motion of Raymond Ives Blakeslee, Esq., solicitor and of counsel for defendant, it is ordered that said appeal be and hereby is allowed to defendant, to the United States Circuit Court of Appeals for the Ninth Circuit, from said interlocutory decree granting and allowing an injunction

against defendant, and that the amount of defendant's bond on said appeal be in a sum calculated at eight dollars (\$8.00) per infringing device, sold by defendant above named, the number of which infringing devices are to be shown in a verified statement to be filed herein by defendant within twenty (20) days from date of this order, such security to act likewise as a supersedeas of any judgment for costs and disbursements which may be entered against said defendant in accordance with said decree, and to operate likewise as a supersedeas of and suspend the issuance of any injunction ordered by said interlocutory decree, and as a supersedeas of [200] and to suspend the accounting of profits and damages provided for in said interlocutory decree, pending the determination of said appeal by said United States Circuit Court of Appeals for the Ninth Circuit, and pending the determination of any appeal thereafter allowed and taken to the Supreme Court of the United States.

It is further provided that pending the determination of any such appeal, defendant shall file herein, each three (3) months after the filing of the first verified statement hereinabove mentioned, a similar statement showing the sales by said defendant of said infringing devices during the preceding period of three months, and that defendant shall file in connection with each such additional statement, and at the same time each is filed, a further or additional bond in a sum calculated at eight dollars (\$8.00) per infringing device therein shown to have been so sold by said defendant, all as a condition

for further staying of the issuance of the aforementioned injunction, and as a further condition for superseding of any said judgment for costs and disbursements and further superseding and staying said accounting of profits and damages.

It is further ordered that the conditions of said first named bond shall be the conditions that defendant Pacific States Electric Co. shall pay to plaintiff, William D. Wright, his heirs, assigns and legal representatives, any judgment for costs and disbursements which may be entered against said defendant in accordance with said decree, and all profits and damages which may be found or assessed against defendant by reason of the suspending of the issuance of said injunction, and all profits and damages heretofore accrued; and upon the giving of such bond with good and sufficient security to be approved by the Court, said writ of injunction shall not issue [201] until the determination of said appeals, nor shall said accounting of profits and damages be proceeded with until the determination of said appeals, nor shall any execution be issued against defendant for any judgment for costs and disbursements which may be entered against said defendant in accordance with said decree, until the determination of said appeals.

It is further ordered that upon the filing of such first named bond a certified transcript of the records and proceedings herein, in accordance with the statutes and Equity Rules, be forthwith transmitted to said United States Circuit Court of Appeals for the

Ninth Circuit, together with all the exhibits on file in this case.

Dated April 2, 1921.

TRIPPET,
District Judge.

Approved as to form, as provided in Rule 45.

FREDERICK S. LYON,
LEONARD S. LYON,
Solicitor and Counsel for Plaintiff. [202]

[Endorsed]: No. D-68—In Equity. In the United States District Court, Southern District of California, Southern Division. William D. Wright, Plaintiff, vs. Pacific States Electric Co., Defendant. Order Allowing Appeal and Fixing Amount of Bond and Providing for Supersedeas. Filed Apr. 2, 1921. Chas. N. Williams, Clerk. Fred E. Subith, Deputy. Raymond Ives Blakeslee, 727-30 California Building, Los Angeles, Cal., Solicitor for Defendant. [203]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. D-68.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant.

**Verified Statement of Defendant Pursuant to Order
of Court of April 2, 1921.**

United States of America,
State of California,
County of Los Angeles,—ss.

F. J. Airey, being duly sworn according to law, says: That he is district manager, with offices at Los Angeles, California, for defendant Pacific States Electric Co., above named, with offices at 236 South Los Angeles Street, in said city of Los Angeles; that an examination of the books, records and accounts of defendant discloses that defendant has sold during the period of time commencing January 30, 1917, and ending April 2, 1921, 1120 waffle-irons or infringing devices, or devices decreed to be infringing devices pursuant to the interlocutory decree made and entered in the above-entitled cause April 2, 1921; and affiant states that such figures of sales are true, accurate and correct to the best of his knowledge, information and belief

FRANK J. AIREY.

Subscribed and sworn to before me this 22d day of April, 1921.

[Seal] DELPHINE DICKSON,
Notary Public in and for the County of Los Angeles, State of California. [204]

[Endorsed]: In Equity—No. D-68. In the United States District Court, Southern District of California, Southern Division. William D. Wright, Plaintiff, vs. Pacific States Electric Co., Defendant. Verified Statement of Defendant Pursuant to Order

of Court of April 2, 1921. Received copy of within statement this 22d day of April, 1921. Frederick S. Lyon, Leonard S. Lyon, Attorneys for Plaintiff. Filed Apr. 22, 1921. Chas. N. Williams, Clerk. P. W. Kerr, Deputy. Raymond Ives Blakeslee, 727-730 California Building, Los Angeles, Cal., Solicitor for Defendant. [205]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. D-68.

WILLIAM D. WRIGHT,

Plaintiff-Appellee,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant-Appellant.

**Stipulation as to Minute Order and Appeal and
Supersedeas Bond.**

The appeal heretofore allowed to defendant-appellant in this cause having been taken in open court, and the petition and assignments of error having been filed in open court, and the order allowing appeal having been signed in open court, at the time that the decree and order appealed from was signed, to wit, April 2, 1921, and the deputy clerk in attendance having omitted to enter in the order-book any minute order thereof, it is stipulated by and between the parties to this cause, by their respective solicitors, that the clerk may enter in said order-book as of the date of April 2, 1921, an order, *nunc*

pro tunc, or otherwise, setting forth the above-stated facts.

And it is further stipulated and agreed that an order, *nunc pro tunc*, may be entered that the approval of the bond of defendant-appellant on appeal and for supersedeas may bear date of May 2, 1921, where such date was omitted.

These stipulations are entered into subject to approval by the Court.

Dated Los Angeles, Cal., May 14, 1921.

FREDERICK S. LYON,

LEONARD S. LYON,

Solicitors and Counsel for Plaintiff-Appellee.

RAYMOND IVES BLAKESLEE,

JOHN P. BARTLETT,

Solicitors and Counsel for Defendant-Appellant.

Approved and so ordered.

TRIPPET,

Judge. [206]

[Endorsed]: In Equity—No. D-68. In the United States District Court, Southern District of California, Southern Division. William D. Wright, Plaintiff-Appellee, vs. Pacific States Electric Co., Defendant-Appellant. Stipulation and Order as to Minute Order and Appeal and Supersedeas Bond Filed May 16, 1921. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. Raymond Ives Blakeslee, 727-30 California Building, Los Angeles, Cal., Solicitor for Defendant-Appellant [207]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. D-68.

WILLIAM D. WRIGHT,

Plaintiff,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That United States Fidelity & Guaranty Company, a corporation of the State of Maryland, and duly licensed to transact business in the State of California, is held and firmly bound unto William D. Wright, plaintiff in the above-entitled suit, in the penal sum of Eight Thousand Nine Hundred Sixty Dollars (\$8,960.00), to be paid to said William D. Wright, his heirs, assigns and legal representatives, for which payment well and truly to be made, the United States Fidelity & Guaranty Company binds itself, its successors and assigns, firmly by these presents.

Sealed with its corporate seal and dated this 25th day of April, 1921.

The condition of this obligation is such that whereas Pacific States Electric Co., defendant in the above-entitled suit, is taking an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the interlocutory order or decree made, rendered and entered on April 2, 1921,

by the District Court of the United States, for the Southern District of California, Southern Division, in the above-entitled cause, ordering, adjudging and decreeing that defendant be restrained and enjoined as in said Interlocutory Decree set forth;

AND WHEREAS, said District Court of the United States for [208] the Southern District of California, Southern Division, has fixed the amount of defendant's bond on said appeal in the sum of Eight Thousand Nine Hundred Sixty Dollars (\$8,960.00), and has ordered and directed that the issuance of said injunction be suspended until the determination of said appeal, and pending the determination of any appeal thereafter allowed and taken to the Supreme Court of the United States, and has ordered and directed that said bond shall act as a supersedeas of any judgment for costs and disbursements which may be entered against said defendant in accordance with said decree pending the determination of any said appeal, and has ordered that said bond shall likewise act as a supersedeas and stay of any accounting of profits and damages as ordered by said interlocutory decree,—upon condition that defendant give a bond in security in said sum of Eight Thousand Nine Hundred Sixty Dollars (\$8,960.00), to serve likewise as defendant's said bond on said appeal, that the defendant will well and truly pay to William D. Wright, plaintiff, his heirs, assigns and legal representatives, any judgment for costs and disbursements or for accrued profits and damages which may be entered against said defendant in accordance with said de-

cree, and any and all damages and profits which may be found or assessed against defendant by reason of the suspending of the issuance of said injunction;

NOW, THEREFORE, the condition of this obligation is such that if the above-named defendant shall prosecute its said appeal and any appeal allowed and taken to the Supreme Court of the United States to effect, and answer all costs which may be adjudged against it if it fail to make good its any said appeal, and shall pay to said William D. Wright, plaintiff, his [209] heirs, assigns and legal representatives, any judgment for costs and disbursements which may be entered against said defendant in accordance with said decree, and shall pay to said William D. Wright, plaintiff, his heirs, assigns and legal representatives, all damages and profits which may be found or assessed against it, the defendant, by reason of the suspension of the issuance of said injunction, or which may have accrued, then this obligation shall be void; otherwise to remain in full force and effect.

UNITED STATES FIDELITY &
GUARANTY COMPANY,

By FRED W. HARRISON,
Attorney in Fact. (Seal)

Approved as to form, as provided in Rule 29.

FREDERICK S. LYON,
LEONARD S. LYON,

Solicitors for Plaintiff.

The premium charged for this bond is 89.60 per annum.

State of California

County of Los Angeles,—ss.

On this 25th day of April, in the year one thousand nine hundred and twenty-one, before me, Agnes L. Whyte, a notary public in and for said county and State, residing therein, duly commissioned and sworn, personally appeared Fred W. Harrison, known to me to be the duly authorized attorney in fact of the United States Fidelity and Guaranty Company, and the same person whose name is subscribed to the within instrument as the attorney in fact of said company, and the said Fred W. Harrison duly acknowledged to me that he subscribed the name of the United States Fidelity and Guaranty Company thereto [210] as surety and his own name as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

AGNES L. WHYTE,

Notary Public in and for Los Angeles County, State
of California.

Approved.

TRIPPET,
District Judge.

May, 1921. [211]

[Endorsed]: In Equity—No. D-68. In the United States District Court, Southern District of California, Southern Division. William D. Wright, Plaintiff, vs. Pacific States Electric Co., Defendant. Bond on Appeal. Filed May 6, 1921. Chas. N. Williams, Clerk. R. S. Zimmerman, Deputy. Ray-

mond Ives Blakeslee, 727-30 California Building,
Los Angeles, Cal., Solicitor for Defendant. [212]

In the United States District Court, Southern
District of California, Southern Division.

IN EQUITY—No. D-68.

WILLIAM D. WRIGHT,

Plaintiff-Appellee,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant-Appellant.

Praeipie for Transcript of Record.

To the Clerk of the Court:

Please prepare and certify transcript of record on appeal in the above-entitled cause, in accordance with the annexed stipulation and order filed herewith and certify the same to the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to the order of this Court allowing appeal herein, together with all of the exhibits in this case.

RAYMOND IVES BLAKESLEE,

JOHN P. BARTLETT,

Solicitors for Defendant-Appellant. [213]

[Endorsed]: No. D-68—In Equity. In the United States District Court, Southern District of California, Southern Division. William D. Wright, Plaintiff-Appellee, vs. Pacific States Electric Co., Defendant-Appellant. Praeipie. Raymond Ives Blakeslee, 727-30 California Building, Los Angeles, Cal., Solicitor for Defendant-Appellant. [214]

In the United States District Court, Southern
District of California, Southern Division.

IN EQUITY—No. D-68.

WILLIAM D. WRIGHT,

Plaintiff-Appellee,

vs.

PACIFIC STATES ELECTRIC CO.,

Defendant-Appellant.

**Stipulation as to Transcript of Record on Appeal,
and Exhibits.**

The defendant having taken appeal in this suit,
to the United States Circuit Court of Appeals for
the Ninth Circuit, from the interlocutory decree of
April 2, 1921,

IT IS HEREBY STIPULATED AND AGREED:

Both parties to this suit so desiring, the provisions
of Equity Rules 75, 76 and 77, excepting the second
paragraph of Rule 76, promulgated by the United
States Supreme Court, applicable to appeals, are
hereby waived; that the testimony in this cause be
reproduced for the transcript in question and
answer form, to preserve the exact form and sub-
stance of the same; and that the reporter who re-
ported the proceedings on the trial herein file with
the clerk of this court, for the transcript, and to be
part thereof, at the expense of defendant, a cer-
tified copy of the testimony and proceedings ad-
duced at the trial, as follows: Page 5, line 22 to the
period in line 23; page 29, line 1 to the period in
line 14; page 43, line 4, to the end of line 23; page

44, line 4 to the end of line 21; from the beginning of page 45 to page 114, end of line 17; page 116 to end of line 5, page 142; and all such testimony and [215] proceedings shall be reproduced for the Transcript in the exact form so reported.

That the transcript shall further include a true and correct copy of all the appeal papers, this stipulation and the order of the Court hereon, and the following papers and records in this cause on file in the office of the clerk of this Court, to wit:

The stipulation of April 22, 1921, regarding filing and obtaining approval of appeal and supersedeas bond; the stipulation of May 14, 1921, as to minute order and appeal and supersedeas bond and approval and order of the Court thereon; the minute order of April 2, 1921; the sworn statement of Frank J. Airey, filed April 22, 1921, pursuant to order allowing appeal; the stipulation and order thereon of April 2, 1921, for order staying costs and disbursements judgment, accounting and injunction, until supersedeas bond filed, pursuant to order signed April 2, 1921; the bill of complaint herein; the answer herein; the petition to reopen the case, etc., filed herein; the minute order of January 24, 1921, made and entered herein; the memorandum (opinion) of March 14, 1921, herein; the interlocutory decree herein; the receipt of January 24, 1921, filed herein; all the depositions filed herein, including the depositions of Kelsey, Lawler, Mann and Lamb, omitting the certificates on return and filing of same; the interrogatories filed July 3, 1918, and any answers thereto on file.

All the above shall constitute, together with the book of exhibits hereinafter mentioned, the transcript of record of said cause on appeal, upon which record said appeal shall be heard and determined, which transcript, except said book of exhibits, shall be certified by the clerk of this Court to the United States Circuit Court of Appeals for the Ninth Circuit. [216]

IT IS FURTHER STIPULATED AND
AGREED:

That all exhibits filed by either party herein shall be forthwith transmitted by the clerk of this Court at the expense of defendant, to the clerk of said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, for use on said appeal, and that there shall be printed at the expense of the defendant and under the supervision of the clerk of said United States Circuit Court of Appeals for the Ninth Circuit, in a book of exhibits which shall form a part of the printed transcript of record on appeal for use in said United States Circuit Court of Appeals, for the Ninth Circuit, on said appeal, copies of the following papers or documentary exhibits, to wit: Plaintiff's Exhibits Nos. 1, 4, 7, 9, 10 and 11; Defendant's Exhibits Nos. 2, 3, 11, 12, 13, 14, 15, 22 and 23; certified copy from records of United States Patent Office of papers and drawing re British letters patent to Crompton, et al., of May 19, 1893, No. 10,015, certificate dated Jany. 5, 1921, filed Jany. 24, 1921. Said book of exhibits shall be printed and copies thereof fur-

nished to counsel, pursuant to the Rules of said Circuit Court of Appeals for the Ninth Circuit.

RAYMOND IVES BLAKESLEE,

JOHN P. BARTLETT,

Solicitors and Counsel for Defendant-Appellant.

FREDERICK S. LYON,

LEONARD S. LYON,

Solicitors and Counsel for Plaintiff-Appellee.

It is so ordered this 7th day of June, 1921.

TRIPPET,

District Judge. [217]

[Endorsed]: No. D-68—In Equity. In the United States District Court, Southern District of California, Southern Division. William D. Wright, Plaintiff-Appellee, vs. Pacific States Electric Co., Defendant-Appellant. Stipulation as to Transcript of Record on Appeal, and Exhibits, and Order Thereon. Filed Jun. 7, 1921. Chas. N. Williams, Clerk. By P. W. Kerr, Deputy Clerk. Raymond Ives Blakeslee, 727-30 California Building, Los Angeles, Cal., Solicitor for Defendant-Appellant. [218]

In the District Court of the United States, in and
for the Southern District of California, South-
ern Division.

PACIFIC STATES ELECTRIC COMPANY,
Appellant,

vs.

WILLIAM D. WRIGHT,
Appellee.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

I, Chas. N. Williams, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 218 pages, numbered from 1 to 218, inclusive, to be a full, true and correct copy of the bill of complaint, answer, evidence in behalf of the defendant taken at Boston, Massachusetts, on January 14, 1920, evidence in behalf of defendant taken at Hartford, Connecticut, on January 15, 1920, testimony and proceedings on trial, petition to reopen case, etc., and notice thereof, minute order of January 24, 1921, directing that patent be filed and that defendant pay to plaintiff the sum of \$50.00, receipt for \$50.00 filed January 25, 1921, memorandum of the Court, dated March 14, 1921, minute order of April 2, 1921, directing filing of interlocutory decree, interlocutory decree, stipulation for order staying costs and disbursements, etc., stipulation regarding filing and obtaining approval of appeal and supersedeas bond, interrogatories

addressed to William D. Wright, petition for appeal, assignment of errors, order allowing appeal and fixing amount of bond and providing for supersedeas, verified statement of defendant pursuant to order of Court of April 2, 1921, stipulation as to minute order and appeal and supersedeas bond, bond on appeal, praecipe, stipulation as to transcript of record on appeal and exhibits [219] in the above and therein entitled cause, and that the same together constitute the record in said cause as specified in said praecipe filed in my office on behalf of the defendant and appellant, Pacific States Electric Company, by its attorney of record.

I DO FURTHER CERTIFY that the cost of the foregoing record is \$59.00, the amount whereof has been paid me by the Pacific States Electric Company, the appellant in said cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this eighth day of July, in the year of our Lord one thousand nine hundred and twenty-one, and of our Independence the one hundred and forty-sixth.

[Seal]

CHAS. N. WILLIAMS,

Clerk of the District Court of the United States, in
and for the Southern District of California.

By R. S. Zimmerman,

Deputy Clerk. [220]

[Endorsed]: No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Pacific States Electric Company, a Corporation, Appellant, vs. William D. Wright, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed July 9, 1921.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

Plaintiff's Exhibit No. 1.

[Endorsed]: No. D-68. Wright v. Pacific. Pltf. Exhibit No. 1. Filed Dec. 7, 1920. Chas. N. Williams, Clerk. By Fred E. Subith, Deputy Clerk.

No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 9, 1921. F. D. Monckton, Clerk.

No. 1214486

THE UNITED STATES OF AMERICA.

To All to Whom These Presents Shall Come:

WHEREAS WILLIAM D. WRIGHT, of San Diego, California, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in

ELECTRIC COOKING APPARATUS,

a description of which invention is contained in the specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided, and

WHEREAS upon due examination made the said claimant is adjudged to be justly entitled to a patent under the law.

Now therefore these Letters Patent are to grant unto the said William D. Wright, his heirs or assigns, for the term of Seventeen years from the thirtieth day of January, one thousand nine hundred and seventeen, the exclusive right to make, use and vend the said invention throughout the United States and the Territories thereof.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this thirtieth day of January, in the year of our Lord one thousand nine hundred and seventeen, and of the Independence of the United States of America the one hundred and forty-first.

[Seal]

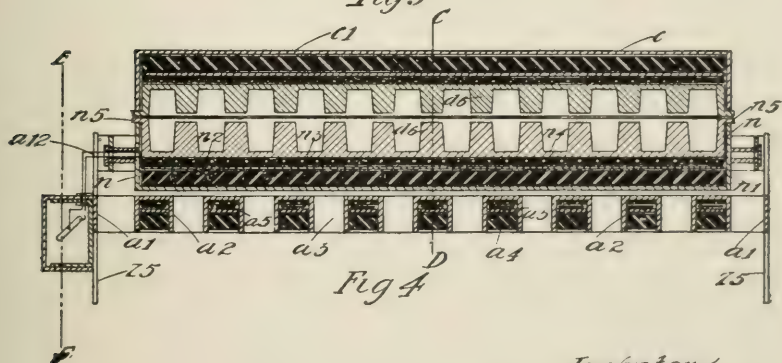
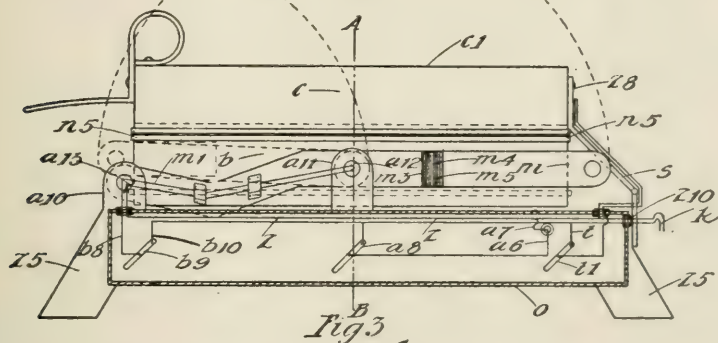
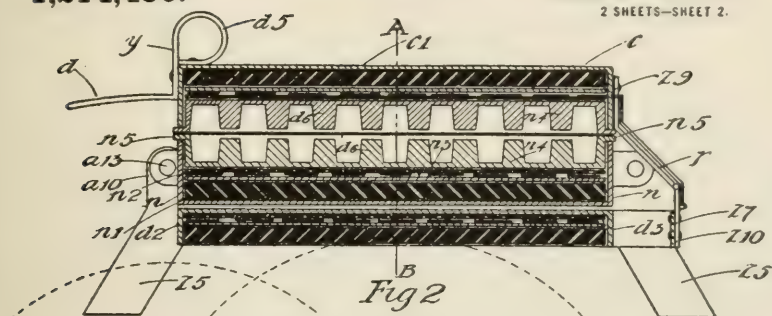
F. W. H. CLAY,
Acting Commissioner of Patents.

W. D. WRIGHT.
ELECTRIC COOKING APPARATUS.
APPLICATION FILED FEB. 5, 1916.

1,214,486.

Patented Jan. 30, 1917.

2 SHEETS—SHEET 2.



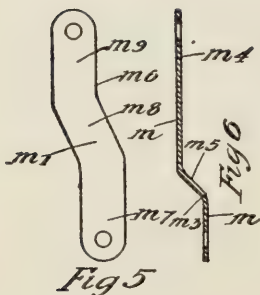
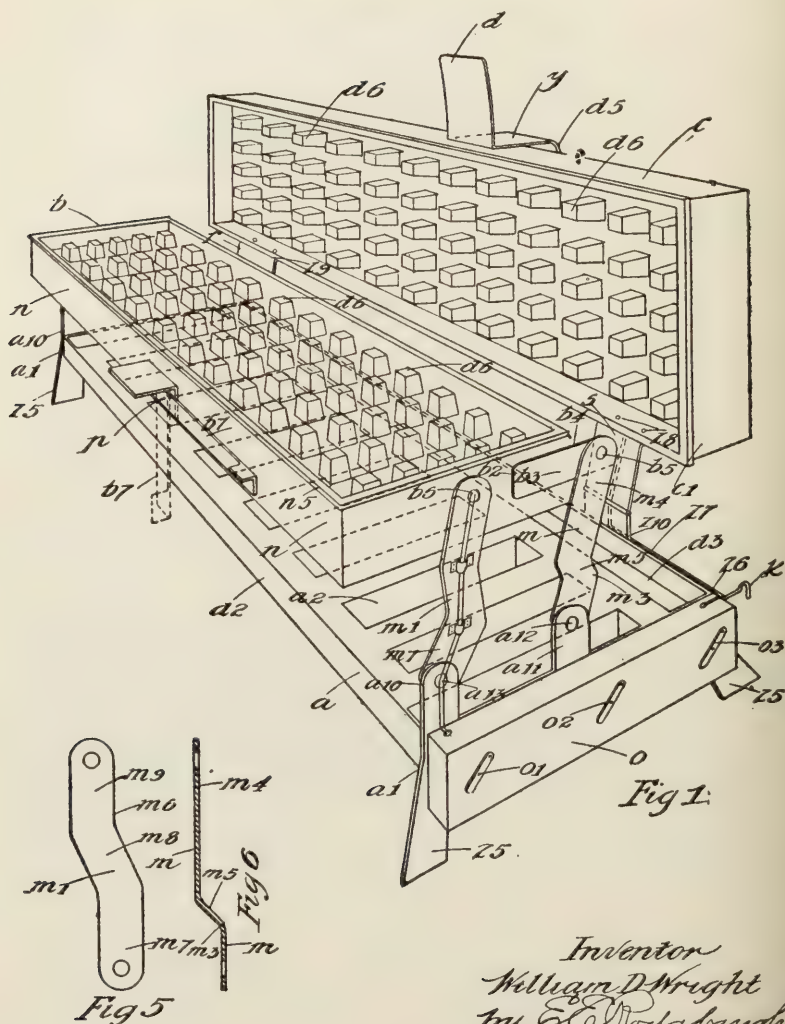
Inventor
William D. Wright
by E. C. Goddard
Attorney

W. D. WRIGHT.
ELECTRIC COOKING APPARATUS.
APPLICATION FILED FEB. 5, 1916.

1,214,486.

Patented Jan. 30, 1917.

2 SHEETS--SHEET 1.



Inventor
William D. Wright
By E. C. Woodruff
Attorney.

UNITED STATES PATENT OFFICE.

WILLIAM D. WRIGHT, OF SAN DIEGO, CALIFORNIA.

ELECTRIC COOKING APPARATUS.

1,214,486.

Specification of Letters Patent. Patented Jan. 30, 1917.

Application filed February 5, 1916. Serial No. 76,266.

to all whom it may concern:

Be it known that I, WILLIAM D. WRIGHT, citizen of the United States, residing at San Diego, in the county of San Diego, State of California, have invented certain new and useful Improvements in Electric Cooking Apparatus, of which the following is a specification.

My invention relates to improvements in electric heating apparatus, more particularly to be used for grilling and waffle baking purposes, but which may also be used for any purpose of the ordinary electrically heated stove, and which may be folded up so as to occupy a small space when not in use, and which provides a large heating surface when unfolded.

One of the objects of my invention is to provide a device of the kind which is so constructed that certain sections thereof may be folded and thus economize in the use of electric current.

Another object of my invention is to provide a new and novel construction of waffle iron.

Another object is to provide a device of the kind that may be quickly converted from one use to a different use, as from a waffle iron to a grill, or to a device providing a large heating surface when required.

These objects and others will more clearly appear from the accompanying drawings which form a part of my specification.

In the drawings similar characters refer to similar parts throughout.

In the drawings, Figure 1 is a perspective view of my device, showing the top waffle member turned back and the other waffle member above the grill member; Fig. 2 is a vertical cross sectional view through C—D in Fig. 4; Fig. 3 is an end elevational view with a part of the casing removed to better illustrate the electric wiring, Fig. 4 is a vertical sectional view through A—B in Fig. 2, Fig. 5 is a detail view of one of the swinging arms, and Fig. 6 is a longitudinal sectional view of the other swinging arm.

The principal parts of my invention are the base or grill member *a*, the lower waffle member *b*, and the upper waffle member *c*.

The member *a* is supported at each end on a support *a*¹, which is provided with feet

*a*²⁵. The member *a* is in shape an oblong rectangle provided with cross-pieces *a*² disposed at regular intervals throughout its length, which form an integral part of the side pieces *d*² and *d*³, leaving between said cross pieces open spaces *a*³. The cross pieces *a*² and the side pieces *d*² and *d*³ are all provided in their lower surfaces with deep longitudinal recesses *a*⁴, in each of which is placed a heating element *a*⁵ and electrically connected to one another. The elements *a*⁵ are electrically connected by means of wires *a*⁶ and *z* which enter at point *a*⁷, and the electric current into said member *a* is controlled by the switch *a*⁸.

The waffle member *b* is preferably made of aluminum and may be of any shape desired, but my preferred construction is an oblong rectangular shape. The member *b* is composed of an outer hollow casing *n* which is preferably made of pressed steel and is provided with a recess or chamber sufficiently deep to contain the non-conductor *n*¹, the heating element *n*², the non-conducting element *n*³ and the base portion of the metallic cooking surface member *n*⁴, all in the order in which I have enumerated same. The metallic cooking surface member *n*⁴ is provided on its circumference with a projecting shoulder *n*⁵ which rests upon and covers the edge of the casing *n*. The member *b* is enough shorter than the member *a* so that the arms *m* and *m*¹ on each end of the members *a* and *b* are of a length equal to the distance from *a*¹² to *a*¹³, and they are inclined toward the member *b* sufficiently to allow the member *b* to be inverted so that the cooking surface of member *b* may be brought directly above and face the member *a*, leaving a sufficient space between the members *a* and *b* to contain a slice of meat or other article for the purpose of grilling it.

The member *c* is identical with member *b* in structure, composition and arrangement of its parts, hence I shall not describe the member *c* in detail.

Both of the members *b* and *c* are provided on their cooking surfaces with projections *d*⁶ found in the ordinary waffle iron which are of a length so that they will have a space between their adjacent ends when the waffle surface of member *c* is placed on the surface

of member *b* and the edges of member *c* and *b* are resting against each other, as shown best in Figs. 2 and 4.

The casing *c*¹ of the member *c* corresponds in size, shape and form with the casing *n*. The casing *n* and its contents are securely fastened together so that the member *b* may be inverted without allowing any of its parts to become displaced, and the casing *c*¹ and its contents are similarly fastened together for the same purpose.

On each end of the member *a* the support *a*¹ is provided with an upwardly extending portion *a*¹⁰, and near the middle of said support *a*¹ there is provided a similar upwardly extending portion *a*¹¹ of the same height and size as *a*¹⁰.

Rigidly mounted on the casing *n* at *b*² is a support member *b*³ having a projected portion *b*⁴. Pivotally mounted on the support member *b*³ at *b*⁵, at its one end, and at its other end, similarly mounted at *a*¹² on the member *a*¹¹, is an arm member *m*. Pivotally mounted at its one end near the middle of the end portion of the casing *n* at *b*⁶, and at its other end pivotally mounted in the portion *a*¹⁰ at *a*¹³, is another swinging arm *m*¹. Arms similar to arms *m* and *m*¹ and of the same shape and length are similarly mounted on the support *a*¹ and casing *n* at the opposite end of the casing *n*. The arm *m* at *m*³ is bent so as to throw the upper end *m*⁴ thereof toward the support *b*³, thereby forming a shoulder *m*⁵ on which the arm *m*¹ at point *m*⁶ may rest when member *b* is inverted, and its waffle surface is placed adjacent to the cooking surface of member *a*. The arm *m*¹ is provided with a straight portion *m*⁷ which is pivoted on the support *a*¹⁰ at *a*¹³, a middle portion *m*⁸ which rises at an oblique angle to *m*⁷ and inclines toward the member *b* and the other end portion *m*⁹ which is parallel to the end of casing *n* and is pivoted to it at *b*⁶.

It will be noticed that if the member *b*, in the position shown in Fig. 1, be moved toward the left, the member *b* will be held in a level position by the arms *m* and *m*¹, and when the end of arm *m* at *b*⁵ drops to the horizontal plane of *a*¹² and *a*¹³ the extended edge of *b* may be caused to rise, so that the member *b* will revolve on the pivots *b*⁶ until the arm *m*¹ rests on the shoulder *m*⁵ of arm *m*, when the waffle surface of member *b* will be adjacent to and directly over the cooking surface of member *a*, and furnish a cooking surface to act on anything being cooked on member *a*. These arms *m* and *m*¹ are adapted to hold the member *b* at all times in a level position relatively to the upper surface of the member *a*, and to allow the member *b* to be swung to one side of the member *a* when so desired or to be reversed and placed over member *a*. A support *b*⁷ is pivotally mounted at *p* on the

side of the casing *n* which is adapted to drop into the position shown by the dotted lines in Fig. 1 to support the member *b* when it is not resting on the member *a*. The heating element in the member *b* is electrically connected to the wires *b*⁸, *b*¹⁰ and *z*, which are controlled by the switch *b*⁹. Firmly mounted on the support members *a*¹ at each end at *z*⁶ is another support member *z*⁷.

The member *c* is mounted, by means of hinges *r* and *s*, which are each mounted at one end on the casing *c*¹ at *z*⁸ and *z*⁹, and on the support *z*⁷ at *z*¹⁰. These hinges *r* and *s* are similar in size and shape, and are of a size to allow the cooking surface of the member *c*, when said member is turned back on said hinges, to be level with the top of member *a*. The member *c* is also provided on its side opposite to the hinged side with a member *y* having a straight projecting portion *d* adapted to facilitate the revolving of the member *c* on the hinges *r* and *s*. The member *y* is also provided with a curved portion *d*⁵ which is adapted to act as a support for the member *c* when it is turned on the hinges *r* and *s* to its reversed position.

The heating element in the member *c* is electrically connected to wires *z* and *t* which are controlled by the switch *t*¹. The wires connecting with the heating elements in all the parts are electrically connected to the main wires *k*. A hollow casing *o* is mounted on the support *a*¹ at the end of the member *a* where the electric conducting wires enter said member *a*. This casing *o* is adapted for concealing and protecting the said electric conducting wires. Mounted in said casing *o* are electric switch buttons *o*¹, *o*², and *o*³ respectively adapted to operate the switches *b*⁹, *a*⁸ and *t*¹.

In operation for baking waffles the members *b* and *c* are placed with member *b* resting on the member *a*, and the member *c*, in the positions shown in Fig. 1. The waffle batter is poured on the cooking surface of the member *b* after which the member *c* is revolved on the hinges *r* and *s* until its cooking surface is directly above the cooking surface of the member *b* and the edge of the cooking member *n*⁴ rests upon the edge of the similar cooking member of the member *b*. The electric current, by means of the switch buttons *o*¹ and *o*³ is turned into the heating elements *b* and *c* and the current through the member *a* may be switched off by means of the switch button *o*².

By reason of both waffle cooking surfaces being made of aluminum no lubrication is required on the said cooking surfaces and the waffles are cooked evenly on both sides at the same time.

If my device is desired to be used for a

1,214,486

3

grill, only, the member *c* may be revolved in the hinges *r* and *s* until the support *d*⁵ rests on the table or support on which the supports *a*¹ are resting, and the member *b*, by means of the arms *m* and *m*¹, may be swung to the other side of the member *a* until the support *b*⁷ rests on the table or other support on which the members *a*¹ are supported. The electric current may be cut out of the members *b* and *c* by the use of the switch buttons *o*¹ and *o*³, and then the member *a* may be used as a grill or for any other purpose by switching on the current in said member by the use of the switch button *o*², or if it is desired to cook both sides of the article on member *a* at the same time, the member *b* may be revolved on pivots *b*⁵ and *b*⁶ until the arm *m*¹ rests on the shoulder *m*⁵ of arm *m* and the cooking surface of member *b* will be directly over member *a*, resting against, or very close to the article being cooked, and the electric current is then turned into the member *b* as well as member *a*.

In case it is desired to use my device for the general heating of cooking utensils or other articles where a large heating surface is required, the electric current may be turned into all three of the members *a*, *b* and *c* and the heating surface of all three of said members may be utilized.

Although I have described my improvements with considerable detail and with respect to certain particular forms of my invention, I do not desire to be limited to such details since many changes and modifications may well be made without departing from the spirit and scope of my invention in its broadest aspect.

Having fully described my improvements, what I claim as new and desire to secure by Letters Patent, is:

1. In a device of the kind described, a grill member mounted at each end on a support, a horizontal support parallel to said grill member mounted at each end of one of said supports, a plurality of swinging arms each mounted at one end on extended portions of said first named supports, a waffle member pivotally mounted on the other ends of said swinging arms, a plurality of hinges each mounted at one end on said horizontal support, another waffle member mounted on the other ends of said hinges, electric heating elements mounted on said grill member and each of said waffle members, and electric conducting wires connected to each of said heating elements and an electric current supply.

2. In combination with an electric grill member, a plurality of swinging arms each pivotally mounted at one end on supports attached to said grill member, another electrically heated member revolvably mounted on the other ends of said swinging arms, said

arms being adapted to form a support for said revolving member and hold the cooking surface thereof in its reversed position at a certain distance from the cooking surface of said grill member, and electric means for heating said grill member and said revolvable member, electrically connected to an electric supply circuit.

3. In a device of the kind described, a pair of support members, a grill member mounted at each end on one of said support members, and provided with a plurality of longitudinal parallel portions and a plurality of parallel cross-pieces forming an integral part of said longitudinal parallel portions, each of said longitudinal portions and cross pieces provided in its lower surface with a longitudinal groove, an electric heating element mounted in each of said grooves and electrically connected to one another and to an electric current supply source, a plurality of swinging arms each revolvably mounted at one end on said supports, another member provided with a waffle-baking surface revolvably mounted on the ends of said swinging arms, an electric heating element mounted in said last named member, said member being adapted to be placed in its inverted position directly above and adjacent to said grill member, or to be swung to one side of said grill member.

4. In a device of the kind described, the combination of two electrically heated members each provided with an aluminum waffle baking surface, swinging arm members upon which one of said electrically heated members is revolvably mounted, and a support upon which the other electrically heated member is hinged, whereby said electrically heated members are adapted to be moved on said swinging arms and said hinges into a position where the waffle baking surfaces may be placed together so that the edges of said baking surfaces will rest firmly against each other.

5. A folding electric cooking apparatus comprising two support members, a grill member firmly mounted at each end on one of said support members, a plurality of swinging arms having one end of each arm pivotally mounted on said support members, a horizontal support member mounted at its ends on said first mentioned support members, another cooking member revolvably mounted on the other ends of said swinging arms, and a third cooking member mounted on a plurality of hinges each attached at its one end to the wall of said member and at its other end to said horizontal support member, all of said cooking members being adapted to be superposed one above the other in a compact form.

6. In a device of the class described, a pair of casings pivotally connected together, a waffle member provided with an aluminum

baking surface mounted in each of said casings so that each of said aluminum baking surfaces covers the upper edge of one of said casings, and means mounted in said casings between said casings and said waffle members for electrically heating said waffle members.

7. In a device of the class described, a pair of casings pivotally connected together, a waffle member provided with aluminum baking surfaces mounted in each of said casings so that their surfaces extend past the edges of said casings, means mounted in said casings between said casings and said waffle members for electrically heating said waffle members, consisting of an electrical heating element adjacent said waffle member and a non-conducting element spacing said electrical heating element from said casing.

8. In a device of the class described, a pair of box-shaped casings pivotally connected together so as to fold one upon the other, a waffle member mounted in each of said casings provided with outwardly extending flanges extending past the edges of said casing, whereby said waffle members are supported on the edge of said casing and spaced apart from the bottom thereof, and electrical

means mounted in the space between said waffle member and said casing for heating said waffle member.

9. In a device of the class described, a pair of box-shaped casings pivotally connected together so as to fold one upon the other, a waffle member mounted in each of said casings provided with outwardly extending flanges extending past the edges of said casing, whereby said waffle members are supported on the edge of said casing and spaced apart from the bottom thereof, electrical means mounted in the space between said waffle member and said casing for heating said waffle member, consisting of an electrical heating element adjacent said waffle member and a non-conducting element spacing said electrical heating element from said casing.

In testimony whereof, I have hereunto subscribed my name in the presence of two subscribing witnesses.

WILLIAM D. WRIGHT.

Witnesses:

INNICE C. CRANE,
MINNIE KORTE.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

Plaintiff's Exhibit No. 4.

[Endorsed]: No. D-68. Wright v. Pacific. Pltff. Exhibit No. 4. Filed Dec. 7, 1920. Chas. N. Williams, Clerk. By Fred E. Subith, Deputy Clerk.

No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 9, 1921. F. D. Monekton, Clerk.

Dec. 9, 1915.

Mr. Frank C. Rapp,
Columbian Bldg.,
Washington, D. C.

Dear Sir:

We are enclosing herewith a pencil sketch of an electrically heated waffle-iron, together with a check and desire to have search made as to the patentability of same.

The device complete is shown in Figure 1 and you will notice that it has an upper member a and a lower member b. Figure 2 is a cross section of the upper member taken through the line A-B in Figure 1. The parts a and b are identical in structure and are hinged together by hinges c, allowing the member a to be turned back on the said hinges c, and rest on the small legs d. The member b is provided with similar legs e. Figure 3 is an enlarged view of the electrical heating element.

The principal parts of the device are the outer steel shell 1, the asbestos lining 2, the electric element 3, the aluminum waffle plate 4, showing corrugations k on the baking surface thereof, and the wires 5 for connecting the device to an electrical

supply wire. The parts in each of the members a and b are held together by a screw m. In operation the preparation to be baked is poured in the form of batter on the corrugated surface of the member b, and the member a is then turned down so that its corrugated surface comes almost in contact with the corrugated surface of the member b. The electric current is switched on and when the baking is completed the member a is turned back on the hinges c and the baked product removed.

It will be noticed in Fig. 3 that in case it is desired to have all the elements heated the conducting wire is connected at the point n and in case it is desired to only heat a portion of the element the wire is connected at o. When the electrical current is made at n the electrical current travels through wires represented by both the solid and the dotted lines, and when the connection is made at o the electrical current passes through the wires represented by the dotted lines only, thereby diminishing the amount of heated surface. The waffle-iron may be made up of as many units as desired.

Kindly return sketch with your report and let us hear from you at as early a date as possible.

Yours truly,

E. E. RODABAUGH.

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Plaintiff's Exhibit No. 7.

[Endorsed]: No. D-68. Wright v. Pacific. Pltf. Exhibit No. 7. Filed Dec. 7, 1920. Chas. N. Williams, Clerk. By Fred E. Subith, Deputy Clerk.

No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 9, 1921. F. D. Monekton, Clerk.

[Billhead of Ingle Manufacturing Company.]

San Diego, Cal., January 14th, 1916.

W. D. Wright,

c/o Stahl & Sons.

Date.	Description.	Charges.	Credits.	Balance.
	6 prs Hinged Galv. Iron Cas- ings 9"x10 $\frac{1}{2}$ " for Electric Waffle Irons	12.15		

Received payment in full

INGLE M'F'G CO.
By J. SMITH, Jr.,
Sec'y.

Plaintiff's Exhibit No. 9.

[Endorsed]: No. D-68. Wright v. Pacific. Pltf. Exhibit No. 9. Filed Dec. 7, 1920. Chas. N. Williams, Clerk. By Fred E. Subith, Deputy Clerk.

No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 9, 1921. F. D. Monekton, Clerk.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

Received and Recorded on the 28th day of August, 1916, in Liber E 100, page 461 of Transfers of Patents.

IN TESTIMONY WHEREOF, I have caused the seal of the Patent Office to be hereunto affixed.

[Seal]

THOMAS EWING,
Commissioner of Patents.

Exd.

G. R. M.

ASSIGNMENT.

Whereas I, William D. Wright, of San Diego, County of San Diego, State of California, have made application for Letters Patent of the United States for an improvement in Electric Cooking Apparatus, which application was filed in the United States Patent Office February 5, 1916, the Serial No. of which is 76,266,

And, whereas, Quince C. Crane of San Diego, County of San Diego, State of California, is desirous of acquiring an interest in the same,

NOW THEREFORE, To all whom it may concern,

Be it known that for and in consideration of the sum of Ten (10.00) Dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said William D. Wright, have sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said Quince C. Crane the undivided two-thirds ($\frac{2}{3}$) part of the whole right,

title and interest in and to said invention, and in and to the Letters Patent therefor aforesaid, the said undivided two-thirds ($\frac{2}{3}$) part to be held and enjoyed by the said Quince C. Crane for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said Letters Patent may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made; and I do hereby authorize and request the Commissioner of Patents to issue the said Letters Patent jointly as herein provided to myself and the said Quince C. Crane, our heirs and assigns.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my seal at San Diego, in the County of San Diego, State of California, this 12th day of August, 1916.

WILLIAM D. WRIGHT.

In the presence of:

E. E. RODABAUGH,

F. F. GRANT.

Recorded Aug. 28, 1916. U. S. Patent Office.

State of California,
County of San Diego,—ss.

On this 12th day of August, A. D. 1916, before me, F. F. Grant, a notary public in and for said county, residing therein, duly commissioned and sworn, personally appeared William D. Wright, known to me to be the person described in and whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal in my office in the County of San Diego, State of California, the day and year in this certificate first above written.

[Seal]

F. F. GRANT,

Notary Public, in and for said County of San Diego, State of California.

My commission expires: June 8, 1918.

[Ten Cents Internal Revenue Stamps Attached.
Canceled 8/12/16.]

Plaintiff's Exhibit No. 10.

[Endorsed]: No. D-68. Wright v. Pacific. Pltf. Exhibit No. 10. Filed Dec. 7, 1920. Chas. N. Williams, Clerk. By Fred E. Subith, Deputy Clerk.

No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 9, 1921. F. D. Monckton, Clerk.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

Received and Recorded on the 2d day of January, 1917, in Liber H 101, page 435 of Transfers of Patents.

IN TESTIMONY WHEREOF, I have caused the seal of the Patent Office to be hereunto affixed.

[Seal]

THOMAS EWING,

Exd.

Commissioner of Patents.

ANL.

ASSIGNMENT.

Whereas we, William D. Wright and Quince C. Crane of the City of San Diego, County of San Diego, State of California, are the owners of a certain invention in Electric Cooking Apparatus, filed February 5, 1916, Serial No. 76,266, upon which Letters Patent were allowed July 29, 1916, and,

Whereas, we the undersigned, are the sole owners of said patent and of all rights under the same, and,

Whereas the Crane & Wright Electric Company, a corporation duly organized and existing under the laws of the State of California, is desirous of acquiring the ownership and entire control of all of the interest in said patent,

NOW, THEREFORE, To all whom it may concern, be it known, That for and in consideration of the issue to us, or to the order of each of us, by said corporation of six hundred (600) shares of its capital stock, the receipt of certificates representing all of said stock amounting to the par value of Sixty Thousand (60,000.00) Dollars, is hereby admitted, we have this day sold, assigned and transferred, and by these presents do sell, assign and transfer, unto the said Crane & Wright Electric Company the entire right, title and interest in and to said Electric Cooking Apparatus and all improvements thereon or alterations therein and in and to the Letters Patent therefor; the same to be held and enjoyed by the said Crane & Wright Electric Company for its own exclusive use and benefit, and for the use and benefit of legal representatives, successors and assigns, to the full end of the term

for which said Letters Patent are, or may be, granted, as fully and entirely as the same would have been held and enjoyed by us had this assignment not been made.

IN TESTIMONY WHEREOF we have hereunto set our hands and seals at San Diego, California, this 25th day of September, 1916.

WILLIAM D. WRIGHT.

QUINCE C. CRANE.

Witnesses:

MINNIE KORTE.

EDGAR E. HENDEE.

State of California,
County of San Diego,—ss.

On this 25th day of September, A. D. 1916, before me, F. F. Grant, a Notary Public, in and for said County, residing therein, duly commissioned and sworn, personally appeared William D. Wright and Quince C. Crane, known to me to be the persons described in and whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal in my office in the County of San Diego, State of California, the day and year in this certificate first above written.

[Seal]

F. F. GRANT,

Notary Public in and for the County of San Diego,
State of California.

Recorded Jan. 2, 1917. U. S. Patent Office.

Plaintiff's Exhibit No. 11.

[Endorsed]: No. D-68. Wright v. Pacific. Pltf. Exhibit No. 11. Filed Dec. 7, 1920. Chas. N. Williams, Clerk. By Fred E. Subith, Deputy Clerk.

No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 9, 1921. F. D. Monckton, Clerk.

ASSIGNMENT.

Whereas, William D. Wright did, on the 5th day of February, 1916, file an application for letters patent for an electric cooking apparatus, serial No. 76,266, which application was thereafter issued in the United States Patent Office, January 30, 1917, patent No. 1,214,486, and,

Whereas, said William D. Wright did on the 12th day of August, 1916, sell, assign, and transfer an undivided two-thirds interest, in and to said application for letters patent, to Quince C. Crane, of San Diego, California, and,

Whereas, said William D. Wright and Quince C. Crane did, thereafter on the 25th day of September, 1916, sell, assign, and transfer, all of their right, title and interest (being the whole thereof), in and to said application for letters patent, to Crane and Wright Electric Company, a corporation duly organized under the laws of the State of California, and,

Whereas, the said Crane and Wright Electric Company, by its only surviving directors, as its trustees, namely: William D. Wright and Ovid E.

Mark, both of San Diego, California, in pursuance to settling up the affairs of said corporation, under and by virtue of the laws of the State of California, are desirous of disposing of its assets.

Now, therefore, for and in consideration of the sum of (\$1.00) one dollar, and other valuable considerations to it, in hand paid by the said William D. Wright, the said Crane and Wright Electric Company, does hereby, through its only surviving directors, as its trustees, sell, assign and transfer to the said William D. Wright, all its right, title, and interest (being the whole thereof), in and to said application for letters patent, and said patent and the invention covered thereby, together with all claims of every kind and character, arising out of past infringements of said letters patent and also all improvements on said letters patent or alterations therein, the same to be held and enjoyed by the said William D. Wright for his own exclusive use and benefit and for the use and benefit of the heirs, assigns, and legal representatives to the full end of the term for which said letters patent are or may be granted as fully and entirely as the same would have been held and enjoyed by said corporation, had this assignment not been made.

IN TESTIMONY WHEREOF we have hereunto set our hand and the seal of the corporation by its only surviving directors as trustees of said corporation, this 13th day of March, 1918.

CRANE AND WRIGHT ELECTRIC CO.

By WILLIAM D. WRIGHT,

OVID E. MARK,

Trustees.

Attest: In the presence of

ALBERT J. DUPLESSIS.

WM. A. CRANE.

Defendant's Exhibit No. 2.

[Endorsed]: U. S. Dist. Court, So. Dist. of California, So. Div. William D. Wright, Plaintiff, vs. Pacific States Electric Company, Defendant. Equity—No. D-68. Defendant's Exhibit No. 2. J. Morrill Fuller, Notary Public. My commission expires Jan. 19, 1923.

No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 9, 1921. F. D. Monckton, Clerk.

ELECTRIC HEATING.

After many years' experience with all the known methods of making Electric Heaters, we have developed the fact that no *durable, reliable* heater can be made to operate at the temperatures required for ninety per cent of the work Electric Heaters are made for, unless the *electric heating element* is so arranged as to have *uniform* temperature, *uniform* and rapid conduction of heat to the thing to be heated, and that the heating element be sealed in place.

No method covers all these requirements except the "Enamel Method," by which the heating resistance is embedded and sealed in an insulating coat of enamel burned on to the article to be heated.

For eight years, continuous constant effort has

been put forth to develop the enamel and the resistance element to a state that would enable us to secure a product that under all ordinary conditions of use would prove durable for years. That this has been accomplished is evidenced by the fact that electric heaters are no longer a novelty, and that our product is in demand throughout the civilized world; our export business to-day is equal to the entire output nine years ago.

While having a large number of patents covering other methods permitting cheaper production cost, after exhaustive trials we have set them aside because they were wrong in principle and unsatisfactory in continued operation.

Recent improvements in enamel and the heating element have been material, and insure our product to be thoroughly reliable.

PLEASE NOTE.

All articles listed are "non-inductive," consequently are equally effective on direct or alternating circuits. It is *very* important that the *actual voltage* of the circuit be given when ordering.

All articles listed are made for standard voltages up to 120. Nearly all articles may be furnished for 220 volts.

All goods using 300 watts or less are supplied with flexible conductor and lamp-socket plugs.

In addition to the goods listed, we manufacture many special forms of Electric Heaters for a variety of machine tools and solicit correspondence for special applications of heat.

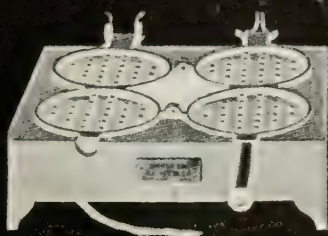
CATALOGUE NUMBER TWELVE, APRIL,
1904.

Displaces General Catalogue Number Seven.
Get New Quotations.

28

Simplex Electric Heating Co.

ELECTRIC WAFFLE IRONS.



No. 1400.



No. 1401.

Waffles are fine when properly made, and nowhere is electric heat more effective in producing a perfectly cooked product.

Both the top and bottom irons are uniformly heated, so that the irons cook the waffle from both sides at the same time, doing the work more quickly than is possible with irons over gas or coal. The irons do not have to be turned, and there is no unequal cooking. As both sides are exactly the same, a glance at the top of the waffle shows the condition of the underside, enabling the operator to get perfect results.

Each pair of irons bake two round waffles, five inches in diameter, at one time. The irons are sup-

ported in plain iron or nickel plated frames containing one pair of irons as listed. Those with nickel plated polished frames have nickel plated trays and are intended for use on the dining or serving table in the breakfast room. A novel though quite a proper and effective addition.

No.		WATTS.	PRICE.
1400	One pair. Size, two waffles.		
	Plain black finish.....	500	\$ 7.50
1401	One pair. Polished nickel		
	plated frame	500	10.00

Defendant's Exhibit No. 3.

[Endorsed]: U. S. Dist. Court, So. Dist. of California, So. Div. William D. Wright, Plaintiff, vs. Pacific States Electric Company, Defendant. Equity No. D-68. Defendant's Exhibit No. 3. J. Morrill Fuller, Notary Public. My Commission expires Jan. 19, 1923.

No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 9, 1921. F. D. Monekton, Clerk.

Serial. Park Mfg. Co.	Type. Prov. R. I.	Test.	Rating.	Shipped.	Orders.
		Volts. Amps.	Volts. Amps.		
1	1502-B		110	3-11-08	60203
2	1502-B		115	11-15-07	"
3	"		"	" " "	"
4	"		"	" " "	60869
5	1502-D		110	11-14-07	67910
6	"		115	5-23-08	60542
7	1502		110	11-14-07	60602
8	1502		110	11- 7-07	R 6-16-08-68573
9	"		"	11-25-07	61297
22483	0		"	11-14-07	60542

Serial. Park Mfg. Co.	Type. Prov. R. I.	Test.	Rating.	Shipped.	Orders.
		Volts. Amps.	Volts. Amps.		
24181	Hair dryer		110	5-19-08	67273
2					67725
3	1401		115	5-19-08	75300
4	"		"	12- 2-08	70413
5	239		220	7-18-08	"
6	"		"	"	71555
7	"		"	8-29-08	67704
8	1661		110	5-21-08	67570
9	240		20	"	67651

B

erial.	rk Mfg. Co.	Type.	Test.	Rating.	Shipped.	Orders.
		Prov. R. I.	Volts. Amps.	Volts. Amps.		
182	0	238		125	5-21-08	"
	1	"		"	"	68133
	2	1400		120	6- 4-08	70213
	3	"		115	7-20-08	69062
	4	1400		110	6-20-08	67487
	5	Heater		125	5-22-08	67290
	6	Vaccum Core		110	5-27-08	"
	7	"		"	"	"
	8	"		"	"	"
	9	"		"	"	"
183	0	"		"	"	"
	1	"		"	"	"
	2	"		"	"	"
	3	"		"	"	"
	4	"		"	"	"
	5	"		"	"	"
	6	"		"	"	"
	7	"		"	"	"
	8	"		"	"	"
	9	"		"	"	"
184	00	"		"	"	"

Serial. Park Mfg. Co.	Type. Prov. R. I.	Test.		Rating.		Shipped.	Orders.
		Volts.	Amps.	Volts.	Amps.		
							72130 C
24187	1	242		220		10-13-08	71052
	2	242		220		8- 6-08	R 1-10 #92734
	3	"		"		11- 9-08	74853
	4	"		"		1-30-09	78332 R. 5.26.13. 54321
			R-10-7-13,-61494,				Reship. 4-29-09=81609
	5	Heater R 7-21-				6- 5-08	68052 R-9-14-82637.
		08-70270	220				R 6/10/09-#834
							R. 6.15.11 #165
	6	1121-G		110		6- 5-08	68067
	7	Spec. Roll		110		6- 9-08	68090
	8	Heater		"		6-11-08	67679
	9	"		"		"	R 11-08. #74572
	0	"		"		"	"
24188	0	"		"		"	"
	1	1608		104		6- 6-08	68438
	2						R. 5.20.10 99035
	3	Laundry Roll		110		6-10-08	68091 R-9-30-14,-82738
	4	1667		220		7-28-08	R 7-16-08-70254
	5						68367
	6	241		230		6- 9-08	68415
	7	241		230		6- 9-08	68416
	8	"		"		"	R. 7.16.10 101097
	9	1401		118		6-11-08	"
	0	#9 Range		115		6-13-08	68533
24189	0	#9 Range		115		6-13-08	68418
	1	1608		"		"	"

Serial. Park Mfg. Co.	Type. Prov. R. I.	Test.		Rating.		Shipped.	Orders.
		Volts.	Amps.	Volts.	Amps.		
2							68533
3	1668			118		6-11-08	68549
4	1608			110		6-16-08	74639
5	1401			115		11-21-08	Reship 2-16-09—78985 67712
6	Gilding wheel			230		6-11-08	72089
7	242			220		9- 3-08	67711
8	Gilding wheel			110		6-11-08	"
9	"	"	"	"	"	"	"
4190	0	"	"	"	"	"	"

Serial. Park Mfg. Co.	Type. Prov. R. I.	Test.		Rating.		Shipped.	Orders.	D
		Volts.	Amps.	Volts.	Amps.			
							67711	
4190	1	Gilding wheel		110		6-11-08	68593	
	2	1661		115		6-18-08	68533	
	3	"		118		6-11-08	68499	
	4	1400		104		6-16-08	67388	
		Reship 6.20.11 16727.						
	5	Fr. hot iron		110		6-22-08	R. 12-7-09 #91514 68004	
	6	Heater		"		6-12-08		
	7						67680 R 6-13-11 #16070	
	8	Heater		110		6-18-08	R. 3.26.10 95750 R 11-08 #74259 " R 8-9-11-17943	
	9	" R. 10.8.10. 3254		"		"	R. 2/10/10 91043 "	
24191	0	" R. 4.15.11. 12985		"		"	R. 12.19.11. 26820. 68187	
	1	238		115		"		

Serial. Park Mfg. Co.	Type. Prov. R. I.	Test.		Rating.		Shipped.	Orders.
		Volts.	Amps.	Volts.	Amps.		
							72931
	2	"		"		10- 2-08	
							70823
	3	238		115		7-30-08	
							71600
	4	"		"		9- 1-08	R. 11.21.12 #43655
R-10-21-14	"	R. 4.13.11.	13321.	R. 8.14.11.	19436.		68187 R 11/4/09 #89549.
83899	5	238		115		6-18-08	R 3-09-79552 R 9-10-1882
		R. 11.5 10.	5033.				R 11.14.12 #42346
							68826
	6	1669		115		6-18-08	
							"
	7	"		"		"	
							68499
	8	1608		104		6-16-08	
							68690
	9	1640		250		6-19-08	
							68457
24192	0	241		250		6-18-08	R 12-08-75697 R 1-09-77593
							69442
	1	"		220		6-27-08	R. 2.28.12 30403
							71555
	2	"		"		8-29-08	
							"
	3	"		"		"	
							"
	4	"		"		"	
							"
	5	"		"		"	
							71590
	6	240		120		10- 1-08	
							68974
	7	240		120		7- 1-08	
							71590
	8	"		"		10- 1-08	
							"
	9	"		"		"	
							68974
24193	0	240		120		7- 1-08	

Serial. Park Mfg. Co.	Type. Prov. R. I.	Test.		Rating.		Shipped.	Orders.
		Volts.	Amps.	Volts.	Amps.		
							69440
24199	1	402		110		7- 7-08	
	2						
	3						
							69696
	4	240		110		7- 7-08	
	5	"		"		"	
	6	240		220		8-29-08	
R 7-5-11-17277	R. 6.29.10	100627	R. 5-12-10	98613			R. 4/15/10 97685
							R. 3/11/10 S. V. 95826
							R. 9=10=2259
R 2-1-11-							
10168	7	240	R. 10.3.10.			7- 7-08	R. 11-19-10-6067 R. 11-08.
		3317		220			#74885 R. 9/7/09 #87098.
	8	Heater		"		7- 8-08	69761
	9	Laundry Roll core	125			7- 9-08	69464
							69573 R. 11-8-13.—63373.
24200	0	Laundry Roll core	220			7-10-08	R. 7-2-10 101139 R. 12-22-13—
							66680
							69845
	1	Laundry Roll core	110			7-15-08	69638
	2	1668		"		7-14-08	"
	3	"		"		"	"
							69023
	4	1666		250		7-15-08	"
	5	"		"		"	"
	6	"		"		"	"
	7	"		"		"	"
	8	"		"			
							69932
	9	1661		110		7-16-08	

Serial. Park Mfg. Co.	Type. Prov. R. I.	Test.		Rating.		Shipped.	Orders.
		Volts.	Amps.	Volts.	Amps.		
							69667
24201	0	240		52		7-16-08	
							70067
	1	1661 Heater		115		7-15-08	
							70299
	2	240		104		"	
							69576
	3	242		220		7-17-08	R. 2-14-11 10506
							69605
	4	240		110		7-18-08	
							"
	5	"		"		"	
							70808
	6	"		"		8- 5-08	
							"
	7	"		"		"	
							"
	8	"		"		"	
							70807
	9	240		110		7-29-08	
							70131
24202	0	1401		110		7-18-08	

Serial. Park Mfg. Co.	Type. Prov. R. I.	Test.		Rating.		Shipped.	Orders.
		Volts.	Amps.	Volts.	Amps.		
							70070
24202	1	1401		115		7-21-08	
							69605
	2	240		110		7-18-08	
							"
	3	"		"		"	
							"
	4	"		"		"	
							70808
	5	"		"		8- 5-08	
							"
	6	"		"		"	
							69605
	7	240		110		7-18-08	

Serial. Park Mfg. Co.	Type.	Test.		Rating.		Shipped.	Orders.
		Volts.	Amps.	Volts.	Amps.		
		Prov. R. I.					70063
	Laundry	Roll core	220			3-17-13	49509.—Repair.
8	Heater		230			"	71694
9	240	R. 9-9-12.					
		39717.		220		8-20-08	71555
24203	0	"		"		8-29-08	
	R. 11-18-10.	5827		R. 7-16-10		101422	76848 E 8=10=1779 R 10168 6/13/11.
1	"	R. 5-26-10		99340			
				R 2-1-11—10168.		12-21-08	R. 4-4-10 96849 R 9/7/09 #87098 71555
2	240			220		8-29-08	76351
3	"			"		12-23-08	71555
4	240			220		8-29-08	76351
5	"			"		12-23-08	71452
6	240			220		8-14-08	70235
7	Spec. plate warmer	110				7-20-08	70411
8	1661			"		7-31-08	71599
9	241			120		9- 1-08	69317
24204	0	1600		220		7-30-08	73256
1	1400			104		10- 6-08	70155
2	"			115		7-28-08	70291
3	1608			113		7-22-08	"
4	#6 Range			"		"	

Serial. Park Mfg. Co.	Type. Prov. R. I.	Test.		Rating.		Shipped.	Orders.
		Volts.	Amps.	Volts.	Amps.		
							69720
5	240			110		7-24-08	R. 12-29-11 27247
							"
6	"			"		"	"
							"
7	"	R 4-09-80710		"		"	R 8/4/09-#85567
							" R 11/14/11 24656
8	"	R. 3-8-12. 30760		"		R-1-12-15,-89314	R 8/12/09 #86114
				R. 10-21-15. 3022		"	R-8-12-13-58898.
9	"			"		"	R-8-16-13-58083.
							69651
24205	0	#6 Range		"		7-29-08	
Serial. Park Mfg. Co.	Type. Prov. R. I.	Test.		Rating.		Shipped.	Orders.
		Volts.	Amps.	Volts.	Amps.		
							75549
24208	1	#7 Range		110		11-23-08	
							70411
2		Spec. Plate warmer	110			7-31-08	
							70731
3		1400		108		7-29-08	
							69756
4		Spec. immersion heater		220		7-30-08	
							73352
5	241			120		10-29-08	
							"
6	"	R 3-09-79223		"		"	
							70641
7	241			100		7-31-08	
8							R 4-09-79850
9							R 4-09-79850
24209	0	241	R. 10-14-10	R. 4-12-11.	13407.		70891 R. 4/10 97654 R-9-27-13.
							61306.
			3952	110		7-31-08	Reship 8-7-08-71144.
							70627
1	241			110		7-31-08	
							70504
2	240			110		7-30-08	
							70448
3		Spec. plate warmer	120			8- 1-08	

Serial. Mfg. Co.	Type. Prov. R. I	Test.		Rating.		Shipped.	Orders.
		Volts.	Amps.	Volts.	Amps.		
							70284
	4	1403		115		8- 1-08	
							70886
	5	1661		110		8- 1-08	
							70474
	6	Spec. plate warmer		115		8- 4-08	
							70611
	7	1103		215		8- 4-08	
							70808
	8	241		110		8- 5-08	
							"
	9	"		"		"	R 9/3/09 #86878.
		R. 2/5/12.		29251			70907 R. 8-15-12. 38469.
4210	0	241	R. 4-12-11.				
		13407.		110		8- 4-08	R. 4/10 97654 R. 10-5-12 40839.
							70808
	1	238		"		8- 5-08	
							"
	2	"		"		"	R. 3.19.13. 50112.
							75775
	3	425		220		12-22-08	
							"
	4	"		"		"	
							70808
	5	241		110		8- 5-08	
							67092
	6	1565		110		5- 6-08	
							"
	7	" Reg.		"		"	
							67011
	8	1574		"		"	
							"
	9	" Reg.		"		"	
							66918
4211	0	1286		100		5- 7-08	

Defendant's Exhibit No. 11.

[Endorsed]: U. S. District Court, Southern Dist. of California, So. Div. William D. Wright, Plaintiff, vs. Pacific States Electric Company, Defendant. In Equity—No. D-68. Defendant's Exhibit No. 11. M. E. Tansey, Notary Public. Filed Dec. 7, 1920. Chas. N. Williams, Clerk. Fred E. Subith, Deputy.

No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 9, 1921. F. D. Monckton, Clerk.

J. F. LAMB.
ELECTRICALLY HEATED UTENSIL.
APPLICATION FILED FEB. 1, 1912.

1,060,263.

Patented Apr. 29, 1913.

Fig. 1.

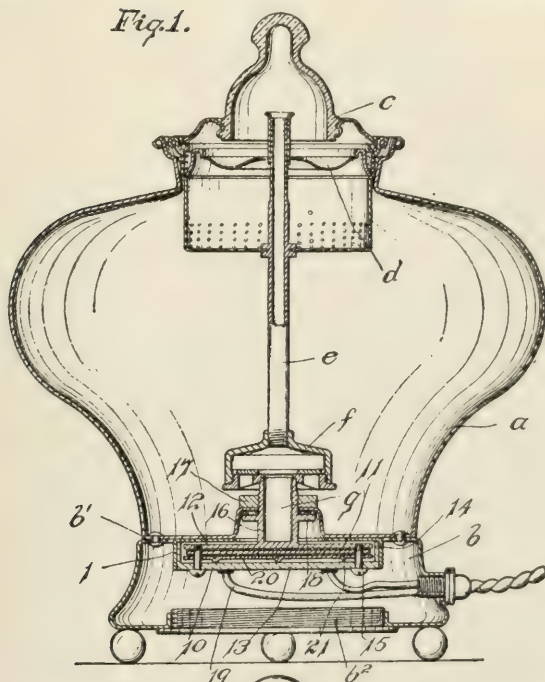
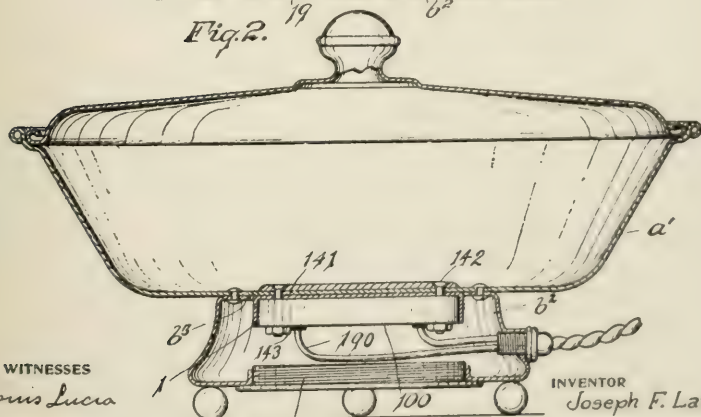


Fig. 2.



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Joseph F. Lamb:

J. E. Hart

BY ATTORNEY

UNITED STATES PATENT OFFICE.

JOSEPH F. LAMB, OF NEW BRITAIN, CONNECTICUT, ASSIGNOR TO
LANDERS, FRARY & CLARK, OF NEW BRITAIN, CONNECTICUT,
A CORPORATION OF CONNECTICUT.

ELECTRICALLY-HEATED UTENSIL.

1,060,263.

Specification of Letters Patent. Patented Apr. 29, 1913.

Application filed February 1, 1912. Serial No. 674,744.

To all whom it may concern:

Be it known that I, JOSEPH F. LAMB, a citizen of the United States, and a resident of New Britain, county of Hartford, State of Connecticut, have invented a certain new and useful Improvement in Electrically-Heated Utensils, of which the following is a specification.

One feature of the invention, applicable for use with any type of an electrically heated utensil relates to the protection of the heater in order to prevent the dissipation and loss of heat.

Another feature of general applicability relates to the manner of assembling the heater with the utensil.

Other features of the invention relate to the electrical heating or operation of devices known as percolators.

For purposes of illustration and description, I have selected a percolator, inasmuch as all features of the invention can be readily seen and understood as embodied therein.

Figure 1 shows a percolator made in accordance with my invention, in central vertical section. Fig. 2 illustrates another type of utensil made in accordance with my invention.

I will first describe the structure illustrated, and then point out the various features of my invention which are present in the structure. *a* denotes the bowl of the percolator, *b* the base, *c* the cover, *d* the tray in which is held the material from which the infusion is to be made, *e* the fountain tube adapted to deliver the water above the tray so that it will drip down onto and through the material in the tray back into the bowl, *f* the valve at the lower end of the fountain tube to control the passage of the water from the bowl into the vaporizing chamber *g* where it is vaporized to create a pumping effect to cause it to pass up to the fountain tube.

There are various forms of valves and vaporizing chambers, and my invention is not limited to its use with the type here illustrated.

The structure here described is such a one as I prefer but it is obvious that in many respects and especially in the character and construction of the radiating members it is susceptible of modification and alteration.

1 denotes a chamber provided at the bottom of the percolator bowl. 10 denotes the

heater adapted to fit closely within this chamber. It is of usual construction in its essential parts, that is to say, it comprises a resistance such as the coil 11 and the oppositely arranged radiating plates 12, 13. It differs in that one of the radiating members as 13 has an upstanding flange 14 of a shape corresponding to the shape of the chamber so that the entire surface of the flange can be brought into close contact with the wall of the chamber in order that the heat in the member 13 will be transmitted to the bowl of the percolator. As thus constructed, the lower radiating member is cup-shaped and receives the resistance coil and the upper radiating member, the structure being held together as by the screws 15.

By preference I make the vaporizing chamber as a part of, and preferably an integral part of, the other radiating member 12, by providing a recessed hub 16 which projects into the interior of the percolator bowl and is exteriorly threaded to receive the nut 17 by means of which the heater is held in place. The valve fits down on the top of this hub as illustrated. The hub is provided with an exterior lateral flange 18 to take a bearing on a wall of the chamber. Inasmuch as it is desirable to concentrate all of the heat of the radiating plate 12 at the vaporizing chamber, this plate is spaced from the wall of the chamber and is thus effectually insulated by the dead air space surrounding it, the entire heating effect being centered at the vaporizing chamber. An asbestos washer is placed between the lateral flange 18 and the wall of the chamber to prevent radiation of heat to the bowl at this point.

The base *b*, having the inturned flange *b'* by means of which it is secured to the percolator bowl and the screw cap *b²* closing it at the bottom, forms in connection with the wall of the bowl a dead air space underneath the heater. It is apparent that all that part of the radiating member 13 except the upstanding side flange is exposed, but the dead air space prevents the dissipation or loss of heat. The chamber which holds the heater may be made and formed in various ways, but preferably I form it separate from the bowl and of inverted cup shape the side walls of which contact with the upstanding flange 14, the end wall being drawn into close contact with the wall of the bowl in

order that the heat transmitted from the radiating member 13 to the chamber will by it be transmitted to the bowl and so to the contents thereof. The terminals 19 from the resistance 11 are brought down to the base and connected up with a receptacle adapted to receive any suitable connection plug.

That part of the invention providing against the loss of heat from the heater is not concerned with the shape of construction of the heater, or to the manner of its assemblage with the utensil, but relates solely to the provision of a heat insulator about exposed parts of the heater, which insulator as shown, and by preference, takes the form of dead air spaces as illustrated and described.

That part of the invention relating to the manner of assembling the unit with the utensil is concerned solely with the provision of a suitable chamber in order that the heating effect can be obtained from both of the radiating members of the heater, together with means for insulating exposed parts of the radiating members when so embodied. There are various ways in which these chambers can be made, either as an integral part of the bowl or separate therefrom but secured in close contact therewith. The principal consideration is that there shall be some mechanical way of attaching the element to the utensil and for holding the chamber in close contact with the wall of the utensil in order to provide for the most perfect transmission of the heat. This avoids liability of damage to the utensil due to over heating, such as would be occasioned if the parts were soldered together.

That part of the invention relating to the use of a heating element in a specific device, such as a percolator, resides in concentrating all of the heat of one of the radiating members at the vaporizing chamber which is formed as a part thereof, all of the heat of this member being utilized for vaporization of the water, while the other radiating member of the unit is utilized for the heating of the contents of the body of liquid within the bowl to a temperature suitable for use. In such a construction each of the radiating members performs a separate function upon the same part or material, namely, the water, and to produce a single result, namely, the production of a proper beverage. The type of heater which may be advantageously employed is equipped with a valve plate shown at 20 interposed between the resistance and the lower radiating member 13, carried by supports 21 resting on the bottom of the lower radiating member 13. This is for the purpose of concentrating the greater part of the heat generated at the vaporizing chamber to produce an effective pumping action

in order that the strength of the beverage can be attained in the shortest possible time. The heat which is allowed to pass to the lower radiating member and from thence through the upstanding flange to the walls of the chamber and so to the walls of the bowl being sufficient to raise the temperature of the body of the liquid to a point proper for use in about the time required for the completion of the percolating action.

In Fig. 2 certain features of the above described invention are illustrated as applied to a chafing dish, water heater and the like, where *a* denotes the utensil, *b*² the base, *b*³ the flange of the base upon which the receptacle rests and to which it is secured, 100 the heating unit, which is located within the holder 141, screws 142 passing through the bottom of the utensil through the base of the holder and through the heating unit, and being engaged by the nuts 143. 190 denotes the terminals from the resistance, and *b*²⁰ denotes a cap constituting an air tight closure for the aperture in the bottom of the base through which the unit can be passed for assembly, replacement, etc.

In using the word utensil, I desire it to be understood that I refer to any device which needs to be, or can advantageously be used in a heated condition and without regard to the use to which it is put.

I claim as my invention:

1. A utensil provided with parts to be separately heated, heat insulators between said parts, an electrical heater and separate heat conducting connections between said parts and the heater.

2. A utensil provided with parts adapted to be separately heated, an electrical heater therefor comprising a flat heating unit, heat conducting connections between one side of said heater and one of said parts, and additional heat conducting connections between the other side of said heater and the other part of the utensil.

3. The combination with the bowl and vaporizing chamber of a percolator and an electrical heater, of a heat conducting connection between one side of said heater and said vaporizing chamber, and an additional heat conducting connection between the other side of said heater and said bowl.

4. The combination with a percolator, of an electrical heater therefor including two radiating members with an interposed resistance, and a vaporizing chamber formed as a part of one of the radiating members, the other radiating member being arranged in heat conducting relation to the bowl of the percolator.

5. The combination with a percolator of an electrical heater therefor, comprising two radiating members spaced from one an-

other at all points, and an interposed resistance, a vaporizing chamber formed as a part of one of the radiating members of said heater and projecting into said bowl, the other radiating member being arranged in heat conducting relation to the bowl of the percolator.

6. The combination with a percolator of an electrical heater therefor, comprising two radiating members spaced from one another at all points, and an interposed resistance, a vaporizing chamber formed as a part of one of the radiating members of said heater and projecting into said bowl but heat-insulated from the walls thereof, the other radiating member being arranged in heat conducting relation to the bowl of the percolator.

7. The combination with a percolator, of an electrical heater therefor, comprising a pair of spaced radiating members and an interposed resistance, a vaporizing chamber formed as a part of one of the radiating members and projecting into said bowl, heat insulators interposed between said radiating member and the walls of the bowl, the other radiating member being arranged in heat-conducting relation with the bowl of the percolator.

8. The combination with a percolator provided with a vaporizing chamber, of an electrical heater therefor, comprising a heating unit, a radiating member in heat conducting relation with the vaporizing chamber and heat-insulated from the bowl, and a second radiating member in heat conducting relation with the bowl but heat-insulated from the vaporizing chamber.

9. The combination with a percolator having a vaporizing chamber mounted in a wall thereof but heat-insulated therefrom, of an electrical heater having one part arranged in heat conducting relation with said vaporizing chamber and another part in heat conducting relation with the bowl of said percolator.

10. The combination with a percolator of an electrical heater therefor comprising a pair of radiating members and an interposed resistance, a vaporizing chamber formed as a part of one radiating member of said heater, means for removably securing said vaporizing chamber to said bowl, and heat conducting connections between the other radiating member and the bowl of said percolator.

11. In a percolator the combination with the bowl, of an electrical heater therefor comprising an upper radiating member heat insulated from the bowl, a vaporizing chamber in heat conducting relation with said radiating member, a lower radiating member in heat conducting relation with the bowl, and a resistance material interposed between said radiating members.

12. In an electrically heated percolator, the combination with a bowl provided with a chamber at its lower end, of an electrical heater comprising a lower radiating member having an upstanding flange to fit within said chamber and contact with the side walls thereof, an upper radiating member spaced from said lower radiating member, a resistance interposed between said radiating members and insulated therefrom, and a recessed hub formed as a part of said upper radiating member and projecting through the aperture in the bowl for the purpose specified, and a heat insulator interposed between the said upper radiating member and the wall of the bowl.

13. In an electrically heated percolator, a chamber formed at the bottom of the bowl and having a central aperture, a heater located in said chamber and including upper and lower radiating members, the lower radiating member thereof being in heat conducting relation with the side walls thereof, a heat insulator interposed between the top member of said heater and the wall of the bowl, a central hub on said top member having a threaded end adapted to project through the aperture and be engaged by securing means located within the bowl, and a fluid-receiving cavity in said hub in communication with the interior of the bowl.

14. In an electrically heated percolator, a chamber formed at the bottom of the bowl and having a central aperture, a heater located in said chamber and including upper and lower radiating members, one radiating member of which is in heat conducting relation with the side walls thereof, a heat insulator interposed between the other radiating member of said heater and the wall of the bowl, a central hub on said last mentioned radiating member exteriorly threaded and adapted to project through the aperture and be engaged by securing means located within the bowl, a fluid-receiving cavity in said hub in communication with the interior of the bowl, and a heat insulator surrounding the exposed parts of said heating element.

15. In an electrically heated percolator, a chamber formed at the bottom of the bowl having a central aperture, an electrical heater located in said chamber and including upper and lower radiating members, the lower radiating member of which is in heat conducting relation with the side walls thereof, a heat insulator interposed between the top member of said heater and the wall of the bowl, a central hub on said top member having a threaded end adapted to project through the aperture and be engaged by securing means located within the bowl, a fluid-receiving cavity in said hub in communication with the interior of the bowl, and a base secured to the bottom of the bowl

4

1,060,263

and forming therewith a closed chamber surrounding the exposed portions of said heating element.

16. In an electrically heated percolator, the combination with a bowl having its bottom recessed and centrally apertured and a base secured to the bottom of said bowl and forming with it an inclosed dead-air space, of a heating element comprising upper and lower radiating members, an upstanding flange on the lower radiating member, a resistance element interposed between and insulated from said radiating members, a recessed hub formed as a part of said upper radiating member and projecting through the aperture, and a receptacle located in said base and to which the terminal wires from said resistance element are connected.

17. In an electrically heated percolator a bowl having an aperture in its bottom, an inverted cup-shaped holder having an aperture, an electrical heater comprising a pair of radiating members and an interposed resistance, one of said radiating members having formed therewith a vaporizing chamber adapted to project through the apertures in the holder and bowl, means within the bowl

engaging the walls of said vaporizing chamber to unite said heating unit and holder with said bowl, the other radiating member of said heater being arranged in heat conducting relation with the wall of said holder, and a heat insulator interposed between the first mentioned radiating plate and said holder and bowl.

18. In an electrically heated percolator, the combination with a bowl of an electrical heater comprising a pair of oppositely arranged radiating members, and an interposed resistance, a recessed hub forming a vaporizing chamber formed integrally with one of the radiating members and projecting through an aperture in the bowl, means within the bowl engaging said hub to secure said heater in position, means for insulating said member from the bowl, means for transmitting the heat in the other radiating member to the walls of said bowl, and a heat insulator surrounding exposed portions of the last mentioned radiating member.

JOSEPH F. LAMB.

Witnesses:

LEROY H. PAGE,

H. A. TRAVER.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

Defendant's Exhibit No. 12.

[Endorsed]: U. S. District Court, Southern Dist. of California. William D. Wright, Plaintiff, vs. Pacific States Electric Company, Defendant. In Equity—No. D-68. Defendant's Exhibit No. 12. M. E. Tansey, Notary Public. Filed Dec. 7, 1920. Chas. N. Williams, Clerk. Fred E. Subith, Deputy.

No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 9, 1921. F. D. Monckton, Clerk.

J. F. LAMB.
HEATING ELEMENT.
APPLICATION FILED APR. 12, 1912.

1,060,264.

Patented Apr. 29, 1913.

Fig. 1.

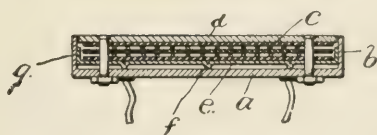


Fig. 2.

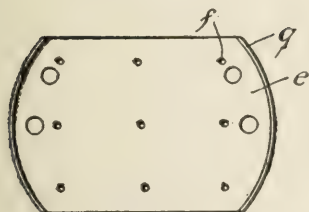


Fig. 3.

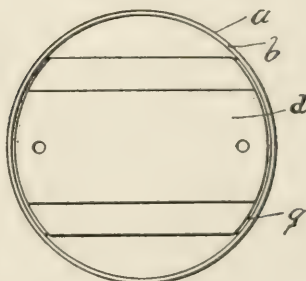
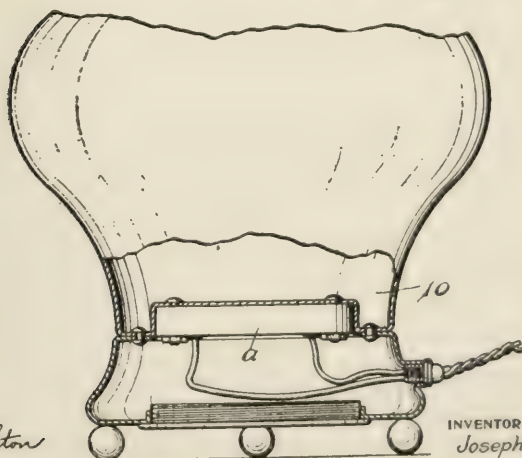


Fig. 4.



WITNESSES

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Louis Lucia

INVENTOR

Joseph F. Lamb.

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UNITED STATES PATENT OFFICE.

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LANDERS, FRARY & CLARK, OF NEW BRITAIN, CONNECTICUT,
A CORPORATION OF CONNECTICUT.

HEATING ELEMENT.

1,060,264.

Specification of Letters Patent.

Patented April 29, 1913.

Application filed April 12, 1912. Serial No. 690,278.

To all whom it may concern:

Be it known that I, JOSEPH F. LAMB, a citizen of the United States, and a resident of New Britain, in the county of Hartford and State of Connecticut, have invented certain new and useful Improvements in Heating Elements, of which the following is a specification.

The object of this invention is to provide a heating unit for use in utensils of various kinds.

It is the purpose of this invention to prevent loss of heat by preventing the transmission of heat to the exposed parts of either of the radiating members. This I accomplish by the use of a valve plate interposed between the resistance material or unit and that radiating member part of whose surface is exposed, that is to say, is not in direct heat conductive relation to the parts of the utensil which it is desired to heat, and by means of which the transmission of heat thereto can be controlled or wholly prevented; but I do provide the said valve plate with surfaces which can be brought into heat conductive relation with other parts of said radiating member or utensil and from which heat is transmitted to the utensil. Thus I am enabled to control the heating of this radiating member to suit any condition of use. Obviously, if the parts of both radiating members were exposed, owing to some peculiar construction or special use, they could both be treated along the general lines of my invention as indicated above.

In the drawings—Figure 1 is a central vertical section of a heating unit made in accordance with my invention. Fig. 2 is a top view of the radiating member. Fig. 3 is a top view of the assembled unit. Fig. 4 is a side elevation partly in section showing the unit installed for use.

Referring to the drawings, illustrating one embodiment of the invention, *a* denotes one radiating member which as shown has an upturned flange *b* within which the resistance *c*, here shown as in the form of a coil, and the radiating member *d* are located and assembled with the proper insulation. In the case illustrated, the upper radiating member is in heat-conductive relation with the wall of the utensil 10, and the flange *b* of the lower radiating member

a is also in similar arrangement. The bottom of the lower radiating member, however, is exposed, that is to say, it does not directly contact with the wall of the utensil and cannot well be arranged to. Consequently, the valve plate *e* is interposed between the resistance *c* and the bottom of the lower member *a* and spaced therefrom by the projections *f*, or if desired, by blocks of insulating material, in order to diminish the amount of, or totally prevent, the passage of heat thereto.

At the edges of the valve plate are flanges *g* which fit closely within, and have intimate surface contact with, the flange *b* on the lower radiating member *a* which in turn contacts with the wall of the utensil. These flanges are preferred since they give greater surface contact but either or both may be dispensed with if desired. It will further be noted that as illustrated, the edges of the upper radiating member do not contact with the flange of the lower radiating member, and it will be observed that when the heating unit is assembled the space between the valve plate and the lower radiating member becomes a dead air space and so acts as an effective heat insulator. The heat in the upper radiating member is transmitted directly to the wall of the utensil, and the heat in the valve plate passes not to the bottom or exposed portion of the lower radiating member but to the flange thereof which is in contact with the wall of the utensil, thus making it possible to utilize the full heating effect of the unit to heat the utensil, or its contents, as the case may be, and avoiding to the greatest possible degree loss of heat due to radiation from exposed surfaces of the radiating members. Obviously, my invention is not concerned with the shape of the unit, or its several parts, or to the method of installation in a utensil, nor is it concerned with the character of the radiating members, that is to say whether they be formed separately from, or as parts of the utensil.

I claim as my invention:

1. In a device of the character described a resistance unit having a part adapted to be arranged in heating relation with a utensil, a heat conducting member arranged against the exposed part of the unit, and a valve plate interposed between said unit and

said member, said member and valve plate being also arranged in heating relation with the utensil.

2. In an article of the character described the combination with a resistance material of heat-radiating members located at opposite sides thereof, and a valve-plate located between said resistance material and one of said heat-radiating members and arranged in heat-conductive relation with active parts of said radiating member and spaced from the inactive parts thereof.

3. In a device of the character described, the combination with heat-radiating members and an interposed resistance, of an upstanding flange formed at the edge of one of the radiating members, a valve plate located between said member and the resistance, and a flange on the valve plate arranged in heat conductive relation to the flange on the radiating member.

4. In an article of the character described, a resistance material, a radiating plate on each side thereof, one of which is provided with an edge flange, a valve plate located between the resistance and said flanged radiating member and spaced from the latter, and a flange on the valve plate arranged in heat-conductive relation with the flange on the radiating member.

5. The combination with an electrical heating element comprising radiating members, and an interposed resistance material, of a valve plate located between one side of said resistance and the adjacent radiating member and spaced from the latter.

6. In an electrical heating unit; the com-

bination with a resistance, radiating plates on opposite sides thereof, spaced from one another at all points, and insulation interposed between said resistance and radiating plates, of a valve plate located between one of said radiating plates and the insulation on the adjacent side of said resistance, and separated supports located between said valve plate and adjacent radiating plate.

7. In an electrical heating unit the combination with a resistance and radiating plates located on opposite sides thereof and spaced from one another at all points, of a valve plate located between one of said radiating plates and the adjacent side of said resistance, the mass of said valve plate being less than the mass of the other radiating plate.

8. In an electrical heating unit a radiating plate provided with an upstanding circumferential flange at its edge, a second radiating plate located in juxtaposition to the first but spaced therefrom at all points, and an interposed resistance, said resistance and second radiating plate being located within said upstanding flange.

9. The combination with an electrical heating unit comprising heat radiating members and an interposed resistance material, of a valve plate located against one side of said resistance material in heating relation therewith and spaced from the adjacent radiating member.

JOSEPH F. LAMB.

Witnesses:

I. M. BUSH,
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Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

Defendant's Exhibit No. 13.

[Endorsed]: U. S. District Court, Southern Dist. of California. William D. Wright, Plaintiff, vs. Pacific States Electric Company, Defendant. In Equity—No. D-68. Defendant's Exhibit No. 13. M. E. Tansey, Notary Public. Filed Dec. 7, 1920. Chas. N. Williams, Clerk. Fred E. Subith, Deputy.

No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 9, 1921. F. D. Monckton, Clerk.

J. F. LAMB.
ELECTRICALLY HEATED DEVICE.
APPLICATION FILED MAY 31, 1912.

1,060,265.

Patented Apr. 29, 1913.

2 SHEETS-SHEET 1.

Fig. 1.

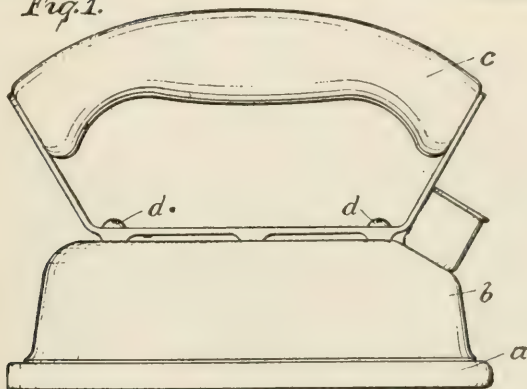


Fig. 2.

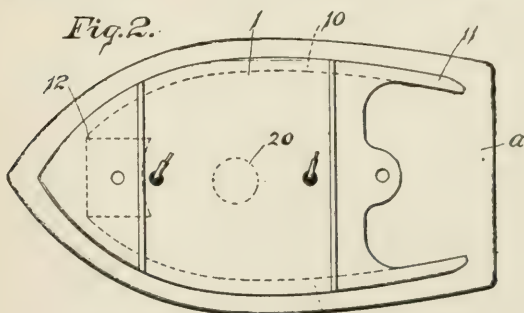


Fig. 3.

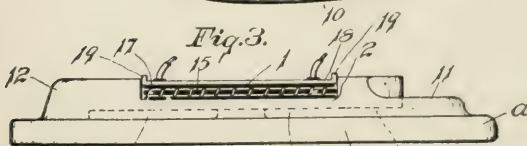
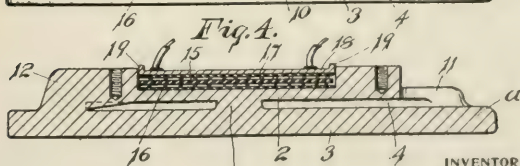


Fig. 4.



WITNESSES

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his ATTORNEY

J. P. LAMB.
ELECTRICALLY HEATED DEVICE.
APPLICATION FILED MAY 31, 1912.

1,060,265.

Patented Apr. 29, 1913.

2 SHEETS—SHEET 2.

Fig. 5

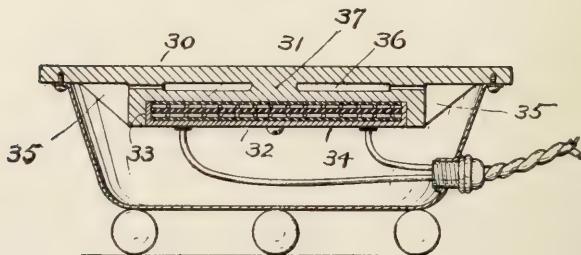
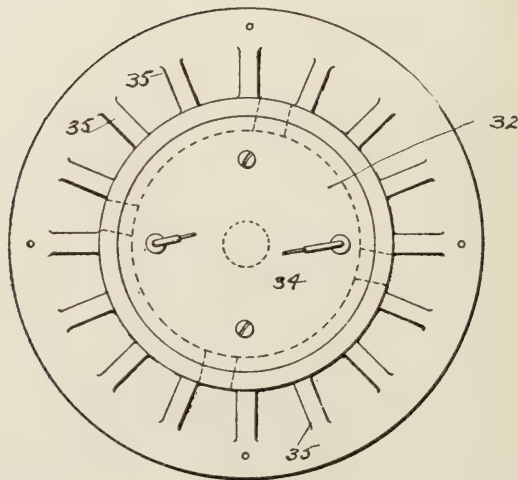


Fig. 6



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UNITED STATES PATENT OFFICE.

JOSEPH F. LAMB, OF NEW BRITAIN, CONNECTICUT, ASSIGNOR TO
LANDERS, FRARY & CLARK, OF NEW BRITAIN, CONNECTICUT,
A CORPORATION OF CONNECTICUT.

ELECTRICALLY-HEATED DEVICE.

1,060,265.

Specification of Letters Patent. Patented April 29, 1913.

Application filed May 31, 1912. Serial No. 700,573.

Call whom it may concern:

Be it known that I, JOSEPH F. LAMB, a citizen of the United States, and a resident of New Britain, in the county of Hartford, State of Connecticut, have invented certain new and useful Improvements in Electrically-Heated Devices, of which the following is a specification.

The object of this invention is to produce an electrically-heated device such as a stove, flat iron, or the like, having features of novelty and advantage.

More especially, by my invention I provide means for distributing the heat evolved in the heating unit to the surface to be heated without special reference to the location of the heating unit relative to the surface to be heated. This makes it possible to use heating units, the design and construction of which are in general like or similar, in connection with devices of various kinds, as distinguished from making a special form of unit for each device which it is desired to heat. This result is accomplished partly through the construction of the unit, which in essential features is the same for various uses, its shape merely being changed, and partly to the manner of mounting the unit in the device, and especially in the method of transmitting the heat from the unit, or its holder, to various parts of the surface to be heated.

I have illustrated two embodiments of the invention for the purpose of clearly disclosing the various features.

Figures 1, 2, 3 and 4 show the invention embodied in a sad iron. Figs. 5 and 6 show the invention embodied in a stove, or heating plate. Fig. 1 is a side view of a sad iron. Fig. 2 is a plan view thereof with the top removed. Fig. 3 is a side view of what is shown in Fig. 2. Fig. 4 is a central vertical section of what is shown in Figs. 2 and 3. Fig. 5 is a side view of a stove, the base being broken away and the heating plate shown in section. Fig. 6 is a bottom view of the heating plate.

Referring to Figs. 1 to 4 inclusive, the iron is denoted at *a*, and *b* is the cover secured thereto as by the screws *d d*. The cover may be weighted if desired and is provided with a suitable handle *c*. The heating unit is located on a support or platform 2 recessed as illustrated. 3 denotes the surface to be heated which in this case is

the sole of the iron. A recess 4 is formed between the platform 2, on which the unit is located, and the surface to be heated, the recess being connected with the base by the side webs 10, 10, the rearwardly projecting ribs 11, 11 and the forwardly extending web or tip 12. Since, as shown these webs and ribs are formed integrally with the surface to be heated and with the socket, it will be seen that they are in heat-conductive relation with both and so constitute an effective means for transmitting the heat evolved in the unit from the platform or recess to the surface to be heated. The size or cross sectional area of these webs or ribs is calculated to produce the amount of heating effect which is desired. A preferred type of heating unit is illustrated and comprises a flat core of insulating material, such as mica, about which is wound a resistance coil 15 on either side of which are thin layers of insulating material 16, 17, such as mica. As illustrated the bottom of the recess or platform 2 forms one of the radiating plates, and on the opposite side of the unit there is located the radiating plate 18 having the edge flange 19 arranged in heat-conductive relation with the side walls of the socket. It will thus be seen that substantially all of the heat evolved in the unit is transmitted directly to the bottom and walls of the recess in which it is located, and by the webs and ribs 10, 11, 12 transmitted to the surface to be heated. The spacing of the bottom of the socket from the surface to be heated, as by the recess 4, is advisable in cases where otherwise the central portion of the surface to be heated, as the sole of the iron, would be overheated. It will be seen that when the cover *b* is in place it provides an envelop of dead air surrounding the socket, ribs and heating unit, preventing to a large degree the dissipation of the heat. Other webs may be utilized in order to get a proper distribution of the heat as indicated at 20,

Referring particularly to Figs. 5 and 6 which show my invention embodied in a stove, 30 denotes the surface to be heated, 31 the platform to which the unit 32 is secured, 33 the socket in which the unit is located, a radiating plate 34 of the unit being in heat-conductive relation with the side walls of the socket. 35, 35 denote the webs of conducting material which carry 110

the heat from the unit to the different parts of the surface to be heated. 36 denotes an air space between the platform and the surface to be heated, and 37 a central web which may be used in cases where it is desired to conduct some of the heat directly to the center of the plate 30 in order to accomplish a proper heating effect.

From a study of the two devices used as illustrations as embodiments of the invention, it will be seen that within reasonable limits the relative positions of the surface to be heated and the platform on which the unit is located is not material since means are provided for carrying the heat to different points and in proper or desirable amounts. Changes in the relative positions of the surface to be heated and the unit will probably require changes in the number and cross sectional area of the conducting webs. It will also be observed that by my invention, it is possible to use a practically standard form of unit for heating various devices rather than construct and shape the unit for special uses.

I do not wish to be understood as limiting the adaptation of my invention to the embodiments which have been selected for illustration as I am aware that there are various devices in which the present invention can be utilized by changing the form or shape of the parts, but still retaining the important features here disclosed.

I claim:

1. In a device of the character described a mass of heat conducting material comprising heat-receiving and heat-yielding sections connected together at different points by webs of desired heat conductive capacity, and an electrical heater arranged in heating relation with said heat-yielding section.

2. In a device of the character described a mass of heat conducting material, comprising heat-receiving and heat-yielding sections spaced from one another in some portions and connected together at other points by webs of desired heat-conductive capacity,

and an electrical heater arranged in heating relation with said heat-yielding section.

3. In a device of the character described a mass of heat conducting material comprising heat-receiving and heat-yielding sections, the latter being provided with a socket, said sections being connected together by webs of suitable heat conductive capacity, and an electrical heater located in said socket in heating relation with said heat-yielding section.

4. In a device of the character described a surface to be heated, a platform formed integrally therewith but spaced therefrom in some portions and connected thereto at other points by webs of desired heat conductive capacity, a flat electrical heater located on the platform and a plate of heat conducting material arranged against the upper side of the heater and in heat conductive relation with the platform.

5. In a device of the character described a surface to be heated, a platform formed integrally therewith but spaced therefrom in some portions and connected thereto at other points by webs of desired heat conductive capacity, said platform being provided with a socket, a flat electrical heater located within the socket against the upper side of said heater and in heating relation with the walls of the socket.

6. In a device of the character described a mass of heat conducting material, comprising heat-receiving and heat-yielding sections, the latter being provided with a socket, said sections being connected together by webs of suitable heat conductive capacity, an electrical heater located in said socket in heating relation with the said heat-yielding section, and a plate of conducting material arranged in heating relation with said heater and in heat conducting relation with the walls of the socket.

JOSEPH F. LAMB.

Witnesses:

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E. ANDREWS.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

Defendant's Exhibit No. 14.

[Endorsed]: U. S. District Court, Southern Dist. of California. William D. Wright, Plaintiff, vs. Pacific States Electric Company, Defendant. In Equity—No. D-68. Defendant's Exhibit No. 14 M. E. Tansey, Notary Public. Filed Dec. 7, 1920. Chas. N. Williams, Clerk. Fred E. Subith, Deputy.

No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 9, 1921. F. D. Monckton, Clerk.

J. F. LAMB.

PROTECTIVE DEVICE FOR ELECTRICALLY HEATED UTENSILS.

APPLICATION FILED DEC. 13, 1912.

1,060,266.

Patented Apr. 29, 1913.

Fig. 1.

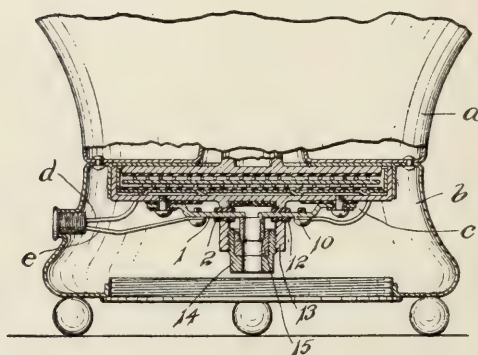
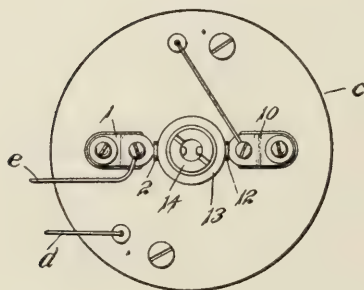


Fig. 2.



WITNESSES

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Laura Lucia

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Joseph F. Lamb:

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 ATTORNEY

UNITED STATES PATENT OFFICE.

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PROTECTIVE DEVICE FOR ELECTRICALLY-HEATED UTENSILS.

1,060,266.

Specification of Letters Patent.

Patented Apr. 29, 1913.

Application filed December 13, 1912. Serial No. 736,526.

all whom it may concern:

Be it known that I, JOSEPH F. LAMB, a citizen of the United States, and a resident of New Britain, in the county of Hartford and State of Connecticut, have invented certain new and useful Improvements in Protective Devices for Electrically-Heated Utensils, of which the following is a specification.

The object of the invention is to provide means for automatically breaking the circuit of an electrical heater at a predetermined temperature, which is a little lower than a temperature which would destroy or injure the heater or the utensil, thus acting as a guard to protect the device in case it is inadvertently left with the current on when it is empty.

In the drawings which we illustrate an embodiment of the invention Figure 1 is a side elevation partly in section, Fig. 2 is the bottom view of the heater.

In the drawings *a* denotes a receptacle, *b* its base, and *c* the complete heater; *d* and *e* represent the circuit wires, the wire *e* being broken and connected with the terminals 1, 10, which, as seen, are spaced apart. These terminals may be conveniently mounted on a part of the heater and insulated therefrom, and, as shown, they project through insulating sleeves 2, 12, into a tubular hub 13, which is threaded to receive a tubular bushing 14, provided with an insulating lining 15 which supports a tube of lead or other suitable metal, which contacts with the spaced terminals 1, 10 and provides an electrical connection between them. If the utensil is empty and the current left on, the heat will soon rise to a point where the lead sleeve will be melted and the circuit between the terminals 1, 10, broken. As the lead melts it will run out through the tubular bushing and so keep the seat in the insulating lining free and clear. In order to reestablish the circuit connections it is only necessary to remove the bushing 14, remove what is left of the lead connector and insert another one, replacing the bushing in position on the hub to connect up the two terminals.

Having now described one embodiment of the invention I desire it to be understood that it is my intention to cover any alterations or modifications which may come within the scope of the appended claims.

I claim as my invention:

1. The combination with an electrical heater, a pair of spaced terminals connected into the circuit of said heater, and a holder, of a connector having a relatively low fusing point, formed separately from but clamped between said terminals and holder.
2. The combination with an electrical heater having a normally broken circuit of a connector made of material fusible at a relatively low temperature, and a holder formed at least in part of insulating material, engaging said connector to hold it in contact with the adjacent ends of the broken circuit.
3. The combination with an electrical heater and a pair of spaced terminals connected into the circuit of said heater, of a tubular hub within which the ends of said terminals project, a bushing threaded into the end of said hub, an insulating lining in said bushing, and a connector of metal fusible at a relatively low temperature separated from but supported by said insulating lining in contact with said terminals.
4. The combination with an electrical heater and a pair of spaced terminals connected into the circuit of said heater, of a tubular hub within which the ends of said terminals project, a tubular bushing threaded into the end of said hub, an insulating lining in said bushing, and a tubular connector of metal fusible at a relatively low temperature supported by said insulating lining in contact with said terminals.
5. The combination with an electrical heater and a pair of spaced terminals connected into the circuit of said heater, of a tubular hub within which the ends of said terminals project, a tubular bushing threaded into the end of said hub, an insulating lining located within the bushing and having an inwardly inclined seat, and a tubular connector of metal fusible at a relatively low temperature supported on the seat in the insulating lining and held in contact with the terminals.
6. The combination with an electrical heater and a pair of spaced terminals connected into the circuit of said heater, of a tubular hub depending from the underside of the heater and having aligned apertures through which said terminals project, insulating linings in the apertures, a connector made of metal having a relatively low fusing

ing point located within said hub in contact with said terminals, a holder for said connector, means for supporting said holder in position, and insulation interposed between the connector and the hub.

5 7. The combination with an electrical heater and a pair of spaced terminals connected into the circuit of said heater, of a holder recessed in one end, a connector lo-

cated in the recess in said holder, insulating material interposed between the holder and connector, and means for supporting said holder to position and maintain said connector in contact with said terminals.

JOSEPH F. LAMB.

Witnesses:

C. H. DEMING,

O. N. JUDD.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

Defendant's Exhibit No. 15.

[Endorsed]: U. S. District Court, Southern Dist. of California. William D. Wright, Plaintiff, vs. Pacific States Electric Company, Defendant. In Equity—No. D-68. Defendant's Exhibit No. 15. M. E. Tansey, Notary Public. Filed Dec. 7, 1920. Chas. N. Williams, Clerk. Fred E. Subith, Deputy.

No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 9, 1921. F. D. Monckton, Clerk.

J. F. LAMB.
ELECTRICALLY HEATED UTENSIL.
APPLICATION FILED DEC. 18, 1912.

1,060,267.

Patented Apr. 29, 1913.

Fig. 1.

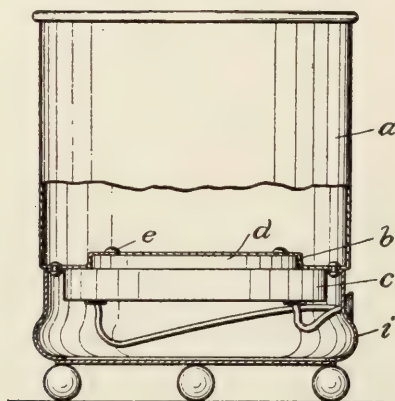
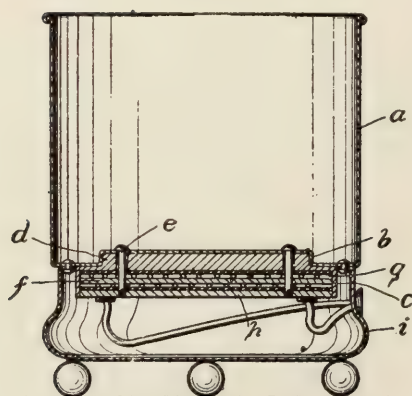


Fig. 2.



WITNESSES

Louis Licia.
Anna E. M. M.

INVENTOR
Joseph F. Lamb

BY

H. E. Hart
ATTORNEY

UNITED STATES PATENT OFFICE.

JOSEPH F. LAMB, OF NEW BRITAIN, CONNECTICUT, ASSIGNOR TO
LANDERS, FRARY & CLARK, OF NEW BRITAIN, CONNECTICUT,
A CORPORATION OF CONNECTICUT.

ELECTRICALLY-HEATED UTENSIL.

1,060,267.

Specification of Letters Patent.

Patented Apr. 29, 1913.

Application filed December 16, 1912. Serial No. 737,118.

to whom it may concern:

Be it known that I, JOSEPH F. LAMB, a citizen of the United States, and a resident of New Britain, in the county of Hartford and State of Connecticut, have invented certain new and useful Improvements in Electrically-Heated Utensils, of which the following is a specification.

The object of the invention is to provide means for utilizing substantially all of the heat generated by the unit to effect the heating of the utensil and to provide for maintaining a perfect heat conducting relation between the unit or parts thereof and the utensil during its operation.

In the drawings Figure 1 is a side view showing part of the utensil in section. Fig. 2 is a sectional view of the complete heating element.

The invention as illustrated is embodied in a receptacle which is indicated at *a*; having a socket *b*; *c* is a holder for the electrical heater made of heat conducting material and having plug *d* which fits closely within the socket, screws *e* holding the holder in position.

f is the heater, which is of the resistance type, located within a recess *g* in the holder and covered by the heat conducting plate *h* which is fitted within the recess, the heater and plate being secured in the holder in any convenient manner. When current is turned to the heater, the holder becomes hot, the plug swells and binds itself into the socket of the receptacle, perfecting and maintaining the heat conductive relation between the

plug and the utensil. The plate *h* also expands under the heat, and swells to a tight fit in the holder. Preferably an air-tight pocket is formed about the holder as by the base *i* to prevent the loss of heat. It will thus be seen that the expansion or distortion of the plate *h* and the plug *d* when heated tends to make more perfect the heat conducting path from the heater to the utensil without the aid of any mechanical clamping or securing devices.

I claim as my invention:

1. The combination with a utensil provided with a socket, of an electrical heater and a holder therefor, said holder being formed of heat conducting material, and a plug on said holder closely fitting the socket and adapted when heated to swell and completely fill the socket and establish more efficient heat conductive relation with the wall thereof.

2. The combination with a utensil provided with a socket, of a holder provided with a plug fitting in the socket and adapted under heat to expand and fill the socket, said holder being provided with a recess, an electrical heater located in the recess, and a plate of conducting material located against the heater and within the recess, and adapted under heat to expand into intimate contact with the walls of the recess.

JOSEPH F. LAMB.

Witnesses:

J. A. LINDSAY,
C. E. CRANE.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

Defendant's Exhibit No. 22.

[Endorsed]: No. D-68. Wright v. Pacific. Deft. Exhibit No. 22. Filed Dec. 7, 1920. Chas. N. Williams, Clerk. By Fred E. Subith, Deputy Clerk.

No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 9, 1921. F. D. Monckton, Clerk.

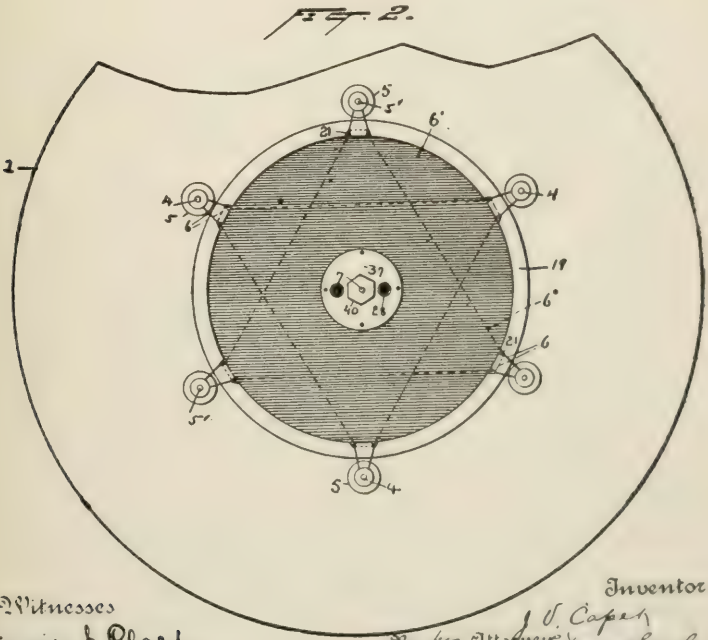
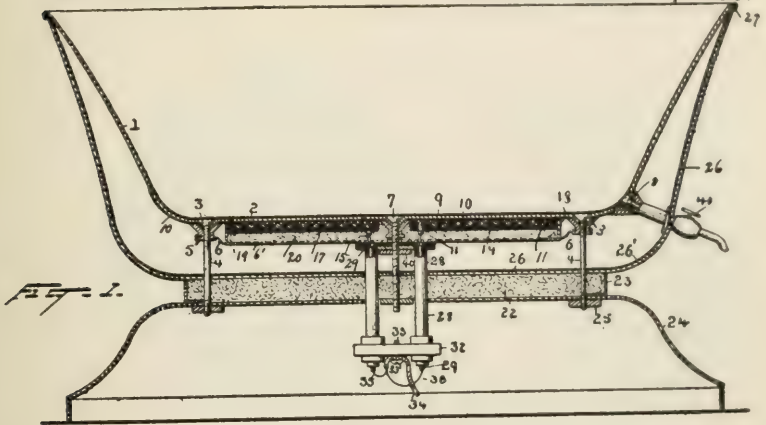
(No Model.)

3 Sheets—Sheet 1.

J. V. CAPEK.
ELECTRICALLY HEATED VESSEL.

No. 493,422.

Patented Mar. 14, 1893.



Witnesses
Ironis & Clark.
Chas. F. Clark

Inventor
J. V. Capek
By his Attorney
D. M. Seely.

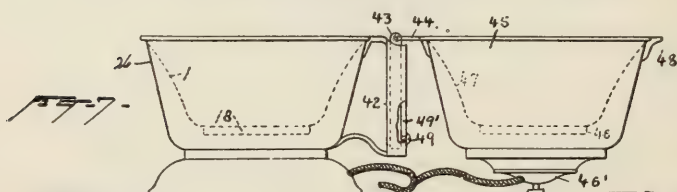
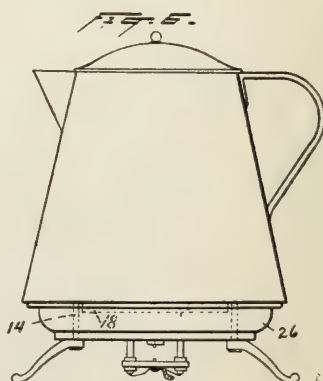
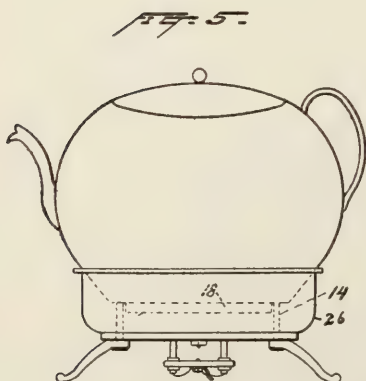
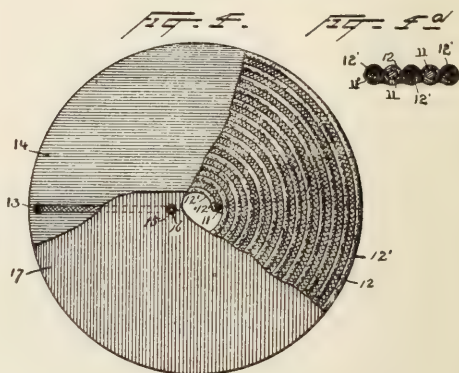
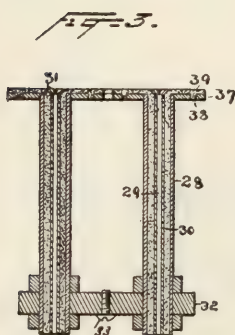
(No Model.)

3 Sheets—Sheet 2.

J. V. CAPEK.
ELECTRICALLY HEATED VESSEL.

No. 493,422.

Patented Mar. 14, 1893.



Witnesses
Thomas A. Clark.
W. B. Oberly

Inventor
J. V. Capek
By his Attorneys
Syer & Seely.

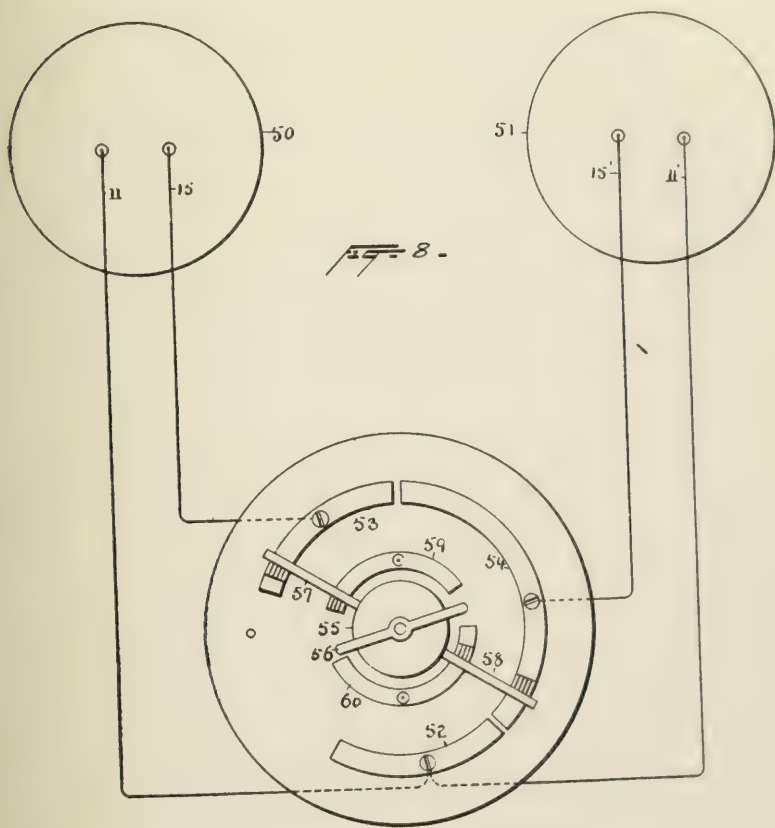
(No Model.)

3 Sheets—Sheet 3

J. V. CAPEK.
ELECTRICALLY HEATED VESSEL.

No. 493.422.

Patented Mar. 14, 1893.



Witnesses
Thomas A. Clark.
Dr. F. G. Clark.

Inventor
J. V. Capek
By his Attorney
Lyons & Sully

UNITED STATES PATENT OFFICE.

JOHN V. CAPEK, OF NEW YORK, N. Y., ASSIGNOR OF ONE-HALF TO
EDWARD H. JOHNSON, OF SAME PLACE.

ELECTRICALLY-HEATED VESSEL.

SPECIFICATION forming part of Letters Patent No. 493,422, dated March 14, 1893.

Application filed December 14, 1891. Serial No. 414,909. (No model.)

To all whom it may concern:

Be it known that I, JOHN V. CAPEK, a citizen of the United States, residing at New York city, in the county and State of New York, have invented a certain new and useful Improvement in Electrical Cooking Utensils, of which the following is a specification.

The present invention relates to devices for cooking, in which electrical heating coils are employed. I term the present heater a direct heater or cooker, since it is preferably employed without an oven, the thing to be cooked being placed directly in the vessel constituting the body of the apparatus, or being placed in a separate vessel which can be set on or into the first mentioned vessel.

The invention consists in the several combinations and features of construction hereinafter set forth and claimed.

In the accompanying drawings, Figure 1 is a central section of my apparatus. Fig. 2 is a bottom view of the vessel on which the heater proper is mounted. Fig. 3 is a view, on a larger scale than in Fig. 1, of the support for the conductors leading to the heater. Fig. 4 is a view looking from the under side of the heating coil or volute, a part of the insulating coatings being broken away to show the arrangement of the conductor. Fig. 4a is a cross section showing the insulation of the heating conductor. Figs. 5 and 6 show the heaters mounted on different forms of receptacles. Fig. 7 shows a form of vessel in which two heaters may be mounted; and Fig. 8 is a diagrammatic view of the circuits and switch connections when two heaters are employed, for example with the utensil shown in Fig. 7.

I take a thin metal receptacle 1, preferably having a flat bottom 2 which serves as the heating plate, and form therein conical seats 3, into which screws 4, with conical heads, are inserted, a tubular nut 5, with flaring head, being preferably placed in the position shown around each screw. Some of the screws are long, as shown in Fig. 1. These are indicated by the numerals 4 in Fig. 2. In addition to the long screws I prefer to use two or more shorter screws 5' for the purpose of giving additional supports for the lacing wire 6, hereinafter described. The short screws will

terminate at the lower end of the sleeves 5. At the center of the bottom 2 is a screw 7 similar to the screws 4. In the bottom, or in one side near the bottom, is a hollow screw 8 forming a passage to the faucet, the head of which is secured in the inner-vessel in the same manner as the screws already described. When these parts have been put in position the vessel is coated with enamel, preferably on the inner and outer faces, as shown by the heavy black lines at 9, 10. The enamel on the inside covers the screw heads and makes the joints tight so that if desired water can be heated directly in vessel 1. The enamel on the outside forms a layer of insulation against which the heating coil rests directly. The enamel is adapted to withstand a high degree of heat; it also stiffens the thin bottom so that it is less liable to be bent out of shape. Said heating coil consists of an iron, German silver or other heating conductor 11, insulated by a coating 12 of cotton fiber soaked or wet with silicate of sodium, and coated or treated with clay digested in silicate of sodium (11') on the side from which the ends of the conductor project, said wire being coiled with an asbestos twine 12', also wet in a solution of silicate of sodium or similar insulating and heat-resisting composition.

In forming the heating coil, the wire and the twine are preferably wound together between two parallel disks which serve to hold the convolutions of the volute in a single plane. When the material with which this insulating coating of the conductor and the twine are treated hardens by drying, the coil is removed from between the disks and will retain its shape. The inner end of the heating conductor is bent at right-angles, as indicated in Figs. 1 and 4. The outer end of the conductor is brought through a hole 13 in the prepared asbestos disk 14, which is placed directly on one face of the coil, and is carried along to a point near the center, and is there bent at a right-angle as indicated at 15, this end projecting through a hole 16 in the prepared asbestos disk 17, placed over the first mentioned layer.

In putting the parts together, I lay the prepared heating coil directly on the outer enameled surface of the bottom 2, the coil be-

ing made to stick thereon by a thin layer of silicate of sodium. The metal ring 18 having a flange 19, is then placed around the coil and against the bottom as shown in Fig. 1, and is secured in place by wires 6 passing around the sleeves 5 and around tongues formed by notches 21 in the flange. Asbestos fiber wet with silicate of sodium (20) is then packed within the ring and on the coil until the ring is full, and the ends of the heating coil only are visible. If desired to further connect the heater and surrounding parts to the plate 2 lacing wires 6" may be used, these wires passing around the sleeves 5 and across asbestos body 15. Over the lacing is placed asbestos paper 6'. The "connector" or device to which the supply wires are connected is held directly against this surface by the screw 7 and nut 40. The connector consists of two tubes 28, centrally within which are smaller conducting tubes 29, separated from each other by the outer tubes by asbestos or other proper insulation 30. The inner tubes are split and slightly spread at their upper ends, as shown at 31, Fig. 3. At the upper end of the tubes is a plate 37 having small holes or indentations 38. The upper face of this plate is covered with a layer of prepared asbestos 39, which also extends into the holes 38 and makes a firm union between the plate and the asbestos. The ends of the heating coil extend into the split ends of the central tubes and form a tight fit.

22 is a plate of prepared and hardened asbestos held in the flanged metal ring 23 which rests directly on the hollow base 24. The screws 4 and 7 pass through this plate and through the base 24 and are secured by nuts 25. Above the plate 22 is a vessel 26 somewhat larger than 1 but being nearly the same diameter at its top, and when the parts are put together said top fits into the groove 27 formed by bending over the upper edge of the vessel 1 and the tubes 28 extend through holes 45 in the base as shown in Fig. 1. It will be clear that with this construction an air space is provided between the inner and outer vessels, and the tightening of nuts 25 securely locks these two vessels together.

50 The vessel 26 is provided with a lining 26' of asbestos or other poor conductor of heat. On the lower ends of the tubes is placed a cross-piece 32, of wood, fiber or other suitable material, for strengthening the tubes and for supporting the screw 33 which holds the cord 34 in which are the two wires 35, 36 which conduct current from the source of current to the heating conductor. These wires are secured, by soldering or otherwise, to the lower end of the tubes 29. The hollow rivet or screw 8, which extends through the inner and outer vessel, is provided with a valve 41, by means of which liquid in the vessel can be withdrawn. The outer part of the cock screws onto the part 8 after the vessels 1 and 26 are secured together.

As already indicated, the substance to be cooked can be placed directly in the vessel 1 since it has a smooth water tight surface, but if preferred, separate cooking vessels may be set on vessel 1, or other forms of vessels may be substituted for vessel 1, as indicated in Fig. 5, where the kettle shown extends into the outer heater vessel 26. The heater, indicated by the rectangle 18 being mounted directly on the bottom of the kettle, and the kettle being secured to the base by screws 4 as described in connection with Fig. 1. In Fig. 6 a flat bottomed coffee-pot rests directly on the top of the outer vessel, and carries the 80 heater.

I prefer in some cases to support my heaters as illustrated in Fig. 7, in which the part at the left may be made as already described in connection with Fig. 1. At one side of this part is a socket 42, in which is a sliding rod 43 forming one member of a hinge. To 43 is pivoted the second member, 44, of the hinge, this member being secured to a cover 45, which preferably incloses a second heater indicated by the dotted rectangle 46, which is the same as ring 18 of Fig. 1, it being held in place by the inner vessel 47, which corresponds to vessel 1 of Fig. 1, and which is secured to the body of the cover. The cap 46' is shown as of a different form from the base of the other section, but it may be of the same form. This cover is provided with an insulating handle 48. When in the position shown, the two heaters can be used independently, but when the cover is moved to its closed position, the substance being cooked can be placed between the two heaters, thereby being inclosed and receiving more intense heat. When the article to be cooked is too large to be held entirely within the two sections of the heater, the rod 43 can be raised, the screw 49 sliding along in a slot 49' provided for it, so as to increase the distance between the two heating coils.

In Fig. 8 two heaters are indicated by the circles 50, 51 and the wires leading therefrom are indicated by 11, 15 and 11', 15'. The wires 11, 11' are connected to the arc 52, the wire 15 to the arc 53, and 15' to the arc 54. At the center of said arcs is an insulating spindle 55, having a handle 56 and carrying two switch arms 57, 58. The positive and negative terminals of the supply circuit are connected to the two arcs 59, 60. With the switch in the position shown, the two heaters will be in series and the current passing through them will be weak. When the switch is moved so as to bring 58 onto 52, only one heater will be in circuit. When the switch is moved a little farther so that the upper contact device will bridge the space between contact plates 53, 54, the two heaters will be in multiple arc. By throwing both heaters in series on first closing the circuit, a too sudden rise of temperature is avoided. If iron wire is used, this is important, as it will enable the iron wire to

be heated up, thereby raising its resistance, before a strong current is passed through it.

What I claim is—

1. A heating wire in the form of a flat volute, and an insulating twine interposed between the successive turns of the wire, substantially as described.
2. A heating wire in the form of a flat volute, and an asbestos twine interposed between the successive turns of wire, substantially as described.
3. The combination, in an electrical heating coil, of a fiber insulated heating conductor, and a cord, the insulation and the cord, or either, being impregnated with a hardening material, the cord lying between the convolutions of the conductor, substantially as described.
4. A conductor for electrical heaters having an insulating coating of fiber soaked with silicate of sodium and covered or treated with clay and silicate of sodium, substantially as described.
5. The combination, in a heater, of the receptacle 1 the bottom of which forms the heating plate, the screws passing through the same, the enamel or coating for said receptacle and screw-heads, thereby forming a tight joint around each screw-head and a heating coil on the bottom of the heating plate, substantially as described.
6. The combination of the heating plate 2, the heating conductor therefor, the insulating layer 20, the tubes 28 and conductors carried thereby, said conductors being adapted to receive the ends of the heating coil, substantially as described.
7. The combination of the heating plate 2, the heating coil therefor, the insulating layer 20, the tubes 28 and conductors carried thereby, said conductors being adapted to receive the ends of the heating coil, and means for securing the tubes and the heating plate together, substantially as described.
8. The combination, in a heater, of a heating plate, a heating coil against the plate, a ring resting against the same side of said plate, said ring carrying insulation, and means for securing said ring and inclosed parts to the heating plate, substantially as described.
9. The combination of the heating plate, the screws extending through the same but sealed water tight, the heating coil resting against said plate, the ring and the insulating layer around and over said coil, and means for holding the same against the heating plate, substantially as described.
10. The combination, in a heating apparatus, of two sections, each containing heating coils, said sections being hinged together by means of an adjustable hinge, whereby the distance between them when the cover is in its closed position can be varied, substantially as described.
11. The combination of several heaters, each containing a heating coil, of a switch for controlling the circuit of said coils, said switch having contacts connected to the supply circuit and to the heating conductors, and a switch arm, the parts being so arranged that the two heaters will first be thrown into circuit in series, then one heater will be thrown in circuit alone, and then the heaters will be thrown in multiple arc, substantially as described.
12. The combination, of the heating vessel or plate, devices projecting therefrom, a ring having a notched flange and resting against said vessel or plate, and wires extending around said device and around the tongues formed by the notches in the flange for securing the ring in place, and an insulated heating coil within the ring, substantially as described.
13. The combination of the heating vessel or plate, the heating coil, the insulation over the coil, the connecting device to which the heating conductor connects, and the screw securing said conductor to the face of the insulation, substantially as described.

This specification signed and witnessed
7th day of December, 1891.

JOHN V. CAPEK.

Witnesses:

CHARLES M. CATLIN,
E. A. MACCLEAN.

Defendant's Exhibit No. 23.

[Endorsed]: No. D-68. Wright v. Pacific. Deft. Exhibit No. 23. Filed Dec. 7, 1920. Chas. N. Williams, Clerk. By Fred E. Subith, Deputy Clerk.

No. 3715. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 9, 1921. F. D. Monckton, Clerk.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the Records of this Office of the File Wrapper and Contents, in the matter of the

Letters Patent of

William D. Wright,

Number 1,214,486, Granted January 30, 1917,
for

Improvement in Electric Cooking Apparatus.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the Patent Office to be affixed at Washington, in the District of Columbia, this 20th day of December, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-fourth.

[Seal]

M. H. COULSTON,
Acting Commissioner of Patents.

tion, Oath and Drawing, enclosed herewith.

Yours truly,

E. E. RODABAUGH.

EER—K.

Enc 1.

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Mail Room. Feb. 5, 1916. U. S. Patent Office.

PETITION WITH POWER OF ATTORNEY.

To the Commissioner of Patents:

Your petitioner, William D. Wright, a citizen of the United States, and a resident of San Diego, County of San Diego, and State of California, whose Postoffice address is 352 Milbrae Street, San Diego, California, prays that Letters Patent may be granted to him for the improvements in Electric Cooking Apparatus, set forth in the annexed specification; and he hereby appoints E. E. Rodabaugh, of San Diego, California, Registration #8788, his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at San Diego, in the County of San Diego,

and State of California, this 28th day of January, 1916.

WILLIAM D. WRIGHT.

[Twenty-five Cents Internal Revenue Stamps Attached. Canceled.]

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B 2

SPECIFICATION.

TO ALL WHOM IT MAY CONCERN:

Be it known that I, WILLIAM D. WRIGHT, a citizen of the United States, residing at San Diego, in the county of San Diego, State of California, have invented certain new and useful Improvements in Electric Cooking Apparatus, of which the following is a specification.

My invention relates to improvements in electric heating apparatus, more particularly to be used for grilling and waffle baking purposes, but which may also be used for any purpose of the ordinary electrically heated stove, and which may be folded up so as to occupy a small space when not in use, and which provides a large heating surface when unfolded.

One of the objects of my invention is to provide a device of the kind which is so constructed that certain sections thereof may be heated and thus economize in the use of electric current. a1-2 Another object is to provide a device of the kind that may be quickly converted from one use to a different use, as from a waffle-iron to a grill, or to a device providing a large heating surface when required.

These objects and others will more clearly appear from the accompanying drawings which form a part of my specification.

In the drawings similar characters refer to similar parts throughout.

In the drawings, Figure 1 is a perspective view of my device, showing the top waffle member turned back and the other waffle member above the grill member; Fig. 2 is a vertical cross sectional view through C'-D in Fig. 4; Fig. 3 is an end elevational view with a part of the casing removed to better illustrate the electric wiring, Fig. 4 is a vertical sectional view through A-B in Fig. 2, Fig. 5 is a detail view of one of the swinging arms, and Fig. 6 is a longitudinal sectional view of the other swinging arm.

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B 3

The principal parts of my invention are the base or grill member a, the lower waffle member b, and the upper waffle member c.

The member *a* is supported at each end on a support a1, which is provided with feet z5. The member *a* is in shape an oblong rectange provided with cross-pieces a2 disposed at regular intervals throughout its length, which form an integral part of the side pieces d2 and d3, leaving between said cross pieces open spaces a3. The cross pieces a2 and the side pieces d2 and d3 are all provided in their lower surfaces with deep longitudinal recesses a4, in each of which is placed a heating element a5

and electrically connected to one another. The elements a5 are electrically connected by means of wires a6 and z which enter at point a7, and the electric current into said member a is controlled by the switch a8.

The waffle member b is preferably made of aluminum and may be of any shape desired, but my preferred construction is an oblong rectangular shape. The member b is composed of an outer hollow casing n which is preferably made of pressed steel and is provided with a recess or chamber sufficiently deep to contain the non-conductor n1, the heating element n2, the non-conducting element n3 and the base portion of the metallic cooking surface member n4, all in the order in which I have enumerated same.

The metallic cooking surface member n4 is provided on its circumference with a projecting shoulder n5 which rests upon and covers the edge of the casing n. The member b is enough shorter than the member a so that the arms m and m1 on each end of the members a and b are of a length equal to the distance from a12 to a13, and they are inclined toward the member b sufficiently to allow the member b to be inverted so that the cooking surface of member b may be brought directly above and face the member a, leaving a sufficient space between the members a and b to contain a slice of meat or other article for the purpose of grilling it.

The member c is identical with member b in

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structure, composition and arrangement of its parts, hence I shall not describe the member c in detail. Both of the members b and c are provided on their cooking surfaces with projections d6 found in the ordinary waffle-iron which are of a length so that they will have a space between their adjacent ends when the waffle surface of member c is placed on the surface of member b and the edges of member c and b are resting against each other, as shown best in Figs. 2 and 4.

The casing c1 of the member c corresponds in size, shape, and form with the casing n. The casing n and its contents are securely fastened together so that the member b may be inverted without allowing any of its parts to become displaced, and the casing c1 and its contents are similarly fastened together for the same purpose.

On each end of the member a the support a1 is provided with an upwardly extending portion a10, and near the middle of said support a1 there is provided a similar upwardly extending portion a-11 of the same height and size as a10.

Rigidly mounted on the casing n at b2 is a support member b3 having a projected portion b4. Pivotally mounted on the support member b3 at b5, at its one end, and at its other end, similarly mounted at a12 on the member a-11, is an arm member m. Pivotally mounted at its one end near the middle of the end portion of the casing n at b6, and at its other end pivotally mounted in the portion a10 at a13, is another swinging arm m1.

Arms similar to arms m and m1 and of the same shape and length are similarly mounted on the support a1 and casing n at the opposite end of the casing n. The arm m at m3 is bent so as to throw the upper end m4 thereof toward the support b3, thereby forming a shoulder m5 on which the arm m1 at point m6 may rest when member b is inverted, and its waffle surface is placed adjacent to the cooking surface of member a. The arm m1 is provided with a straight portion m7 which is pivoted on the support a10 at a13, a middle portion m8 which rises at an oblique angle to m7 and inclines toward the member b and the other end portion m9 which is

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B 5

parallel to the end of casing n and is pivoted to it at b6.

It will be noticed that if the member b, in the position shown in Fig. 1, be moved toward the left, the member b will be held in a level position by the arms m and m1, and when the end of arm m at b5 drops to the horizontal plane of a12 and a13 the extended edge of b may be caused to rise, so that the member b will revolve on the pivots b6 until the arm m1 rests on the shoulder m5 of arm m, when the waffle surface of member b will be adjacent to and directly over the cooking surface of member a, and furnish a cooking surface to act on anything being cooked on member a. These arms m and m1 are adapted to hold the member b at all

times in a level position relatively to the upper surface of the member a, and to allow the member b to be swung to one side of the member a when so desired or to be reversed and placed over member a.

A support b7 is pivotally mounted at p on the side of the casing n which is adapted to drop into the position shown by the dotted lines in Fig. 1 to support the member b when it is not resting on the member a.

The heating element in the member b is electrically connected to the wires b8, b10 and z, which are controlled by the switch b9.

Firmly mounted on the support members a1 at each end at z6 is another support member z7.

The member c is mounted, by means of hinges r and s, which are each mounted at one end on the casing c1 at z8 and z9, and on the support z7 at z10. These hinges r and s are similar in size and shape, and are of a size to allow the cooking surface of the member c, when said member is turned back on said hinges, to be level with the top of member a.

The member c is also provided on its side opposite to the hinged side with a member y having a straight projecting portion d adapted to facilitate the revolving of the member c on the hinges r and s.

The member y is also provided with a curved portion d5 which is adapted to act as a support for the member c when it is turned on the hinges r and s to its reversed position.

The heating element in the member c is electrically connected to wires z and t which are controlled by the switch t1. The wires connecting with the heating elements in all the parts are electrically connected to the main wires k.

A hollow casing o is mounted on the support a1 at the end of the member a where the electric conducting wires enter said member a. This casing o is adapted for concealing and protecting the said electric conducting wires. Mounted in said casing o are electric switch buttons o1, o2, and o3 respectively adapted to operate the switches b9, a8 and t1.

In operation for baking waffles the members b and c are placed with member b resting on the member a, and the member c, in the positions shown in Fig. 1. The waffle batter is poured on the cooking surface of the member b after which the member c is revolved on the hinges r and s until its cooking surface is directly above the cooking surface of the member b and the edges of the cooking member n4 rests upon the edge of the similar cooking member of the member b. The electric current, by means of the switch buttons o1 and o3 is turned into the heating elements b and c and the current through the member a may be switched off by means of the switch button o2.

By reason of both waffle cooking surfaces being made of aluminum no lubrication is required on the said cooking surfaces and the waffles are cooked evenly on both sides at the same time.

If my device is desired to be used for a grill, only, the member c may be revolved on the hinges

r and s until the support d5 rests on the table or support on which the supports a1 are resting, and the member b, by means of the arms m and m1, may be swung to the other side of the member a until the support b7 rests on the table or other support on which the members a1 are supported. The elec-
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tric current may be cut out of the members b and c by the use of the switch buttons o1 and o3, and then the member a may be used as a grill or for any other purpose by switching on the current in said member by the use of the switch button o2, or if it is desired to cook both sides of the article on member a at the same time, the member b may be revolved on pivots b5 and b6 until the arm m1 rests on the shoulder m5 of arm m and the cooking surface of member b', will be directly over member a, resting against, or very close to the article being cooked, and the electric current is then turned into the member b as well as member a.

In case it is desired to use my device for the general heating of cooking utensils or other articles where a large heating surface is required, the electric current may be turned into all three of the members a, b and c and the heating surface of all three of said members may be utilized.

Although I have described my improvements with considerable detail and with respect to certain particular forms of my invention, I do not desire to be limited to such details since many changes

and modifications may well be made without departing from the spirit and scope of my invention in its broadest aspect.

Having fully described my improvements, what I claim as new and desire to secure by Letters Patent, is:

Substitute a²

1. In a device of the kind described, a grill member mounted at each end on a support, (a horizontal support parallel to said grill member mounted at each end on one of said supports), a plurality of swinging arms each mounted at one end on extended portions of said first named supports, a waffle member pivotally mounted on the other ends of said swinging arms, a plurality of hinges each mounted at one end on said parallel support, another waffle member mounted on the other ends of said hinges, electric heating elements mounted in each of said grill member and said waffle members, and electric conducting wires connected to each

76266

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of said heating elements and an electric current supply.

2. In combination with an electric grill member, another electrically heated member revolubly mounted on the ends of a plurality of swinging arms, said arms being adapted to form a support and hold the cooking surface of said revolving member in its reversed position at a certain distance from the cooking surface of said grill member, and electric means for heating said members.

3. In a device of the kind described, a grill member mounted at each end on a support member provided with a plurality of cross pieces spaced apart and forming an integral part of two parallel portions thereof, each of said cross-pieces and parallel portions provided in their lower surfaces with longitudinal grooves in each of which are mounted electric heating elements, which said elements are electrically connected to one another and to a current supply source, another member provided with an electric heating element and a waffle-baking surface revolubly mounted on the ends of a plurality of swinging arms having their other ends pivotally mounted in said supports, said member being adapted to be placed directly above and adjacent to said grill member in its inverted or other position, or to be swung to one side of said grill member.

4. In a device of the kind described, the combination of two electrically heated members each provided with an aluminum waffle-baking surface, one of said members being revolubly mounted on swinging arm members and the other hinged to a support member and being adapted to be moved on said swinging arms and said hinges into a position where the waffle baking surfaces may be placed together so that the edges of said cooking surfaces will rest firmly against each other.

5. A folding electric cooking apparatus comprising a grill member mounted at each end on a support, another electric heated member revolubly mounted on swinging arms which are pivotally

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B 9

mounted on said supports, another electric heated member hinged to a horizontal support mounted at each end on said first named supports, all of said members being adapted to be superposed one above the other in a compact form.

In Testimony Whereof, I have hereunto subscribed my name in the presence of two subscribing witnesses.

WILLIAM D. WRIGHT.

Witnesses:

QUINCE C. CRANE,
MINNIE KORTE.

76266

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OATH.

William D. Wright, the above named petitioner, being sworn, deposes and says that he is a citizen of the United States and a resident of San Diego, in the County of San Diego, and State of California; that he verily believes himself to be the original, first and sole inventor of the improvements in Electric Cooking Apparatus described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the

United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to this application; that no application for patent on said improvement has been filed by him or his representatives or assigns in any country foreign to the United States.

WILLIAM D. WRIGHT.

Sworn to and subscribed before me, this 28th day of January, 1916.

F. F. GRANT,

Notary Public in and for said County of San Diego,
State of California.

76266

11

2-260

H. D. B. Re.

Div. 15. Room 308.

Address only

"The Commissioner of Patents,
Washington, D. C.,
and not any official by name.

Paper No. 2.

All communications respecting this
application should give the serial
number, date of filing, title of
invention, and name of the
applicant.

183

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE
WASHINGTON

E. E. Rodabaugh,

503 Central Mortgage Building,
San Diego, Cal.

Apr. 7, 1916.

Please find below a communication from the EXAMINER in charge of the application of W. D. Wright, Serial No. 76,266, filed Feb. 5, 1916, for Electric Cooking Apparatus.

THOMAS EWING,
Commissioner of Patents.

Claim 1 is rejected as being indefinite. The horizontal support referred to in the second line is not seen. If the casing *n* is meant for the horizontal support, then the reference to the waffle member being pivotally mounted on the other ends of the swinging arms in lines 5 and 6 is inaccurate. In line 9, *each of*, after "in," should be canceled and inserted after "and."

Claims 2 to 5, inclusive, are objectionable as at present drawn. The applicant should positively include the elements instead of indirectly referring to them. In claim 2, line 3, for example, the swinging arms should be positively included. In claim 3, line 2, "a support member" is indirectly referred to.

The claims are considered to contain patentable subject-matter and properly amended will probably be allowed.

Attention is directed to the following patents showing various views of the art:

Ljung, 1,010,059, Nov. 28, 1911, (107-66),

Perky, 797,604, Aug. 22, 1905, (107-58).

A. W. R.

A. W. REDROW.

76266

B 11'

Mail Room. May 2, 1916. U. S. Patent Office.
U. S. Patent Office. Filed May 3, 1916. Division XV.

Paper No. 3

A

In the United States Patent Office.

Div. 15, Rm. 308,

W. D. Wright,

Electric Cooking Apparatus,

Filed Feb. 5, 1916,

Serial No. 76,266.

Hon. Commissioner of Patents,

Sir: In response to the last office action of April 7, 1916, the above named application is amended as follows:

Page 1, of the specification, insert the following between the word "current" in line 16 and "another," line 17: Another object of my invention is to provide a new and novel construction of waffle iron.

The attention of the Office is called to the horizontal support mentioned in line 2 of claim 1 as being shown in Figs. 1 and 2 of the drawings and indicated by the character 27.

Cancel the claims and substitute:

1. In a device of the kind described, a grill member mounted at each end on a support, a horizontal support parallel to said grill member mounted at each end of one of said supports, a plurality of swing-

ing arms each mounted at one end on extended portions of said first named supports, a waffle member pivotally mounted on the other ends of said swinging arms, a plurality of hinges each mounted at per B.

horizontal
one end on said ~~parallel~~ support, another waffle member mounted on the other ends of said hinges, electric heating elements mounted in said grill member and each of said waffle members, and electric conducting wires connected to each of said heating elements and an electric current supply.

2. In combination with an electric grill member, a plurality of swinging arms each pivotally mounted at one end on supports attached to said grill member, another electrically heated member revolubly mounted on the other ends of said swinging arms, said arms being adapted to form a sup-
76266

13

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B 12

port for said revolving member and hold the cooking surface thereof in its reversed position at a certain distance from the cooking surface of said grill member, and electric means for heating said grill member and said revoluble member, electrically con-
per B.

circuit
nected to an electric supply ~~current~~.

3. In a device of the kind described, a pair of support members, a grill member mounted at each end on one of said support members, and provided with a plurality of longitudinal parallel portions and a plurality of parallel cross-pieces forming an

integral part of said longitudinal parallel portions, each of said longitudinal portions and cross pieces provided in its lower surface with a longitudinal groove, an electric heating element mounted in each of said grooves and electrically connected to one another and to an electric current supply source, a plurality of swinging arms each revolubly mounted at one end on said supports, another member provided with a waffle-baking surface revolubly mounted on the ends of said swinging arms, an electric heating element mounted in said last-named member, said member being adapted to be placed in its inverted position directly above and adjacent to said grill member, or to be swung to one side of said grill member.

Sub. B¹

4. In a device of the kind described, the combination of two electrically heated members, an aluminum waffle-baking surface member mounted on the top edge of the casing of each of said members, a plurality of swinging arms each revolubly mounted at one end on one of said electrically heated members, and at its other end revolubly mounted on the support members of said device, a plurality of hinge members each mounted at its one end on the casing of the other of said electrically heated member, and the other end mounted on a horizontal support member mounted on said first named support members, said electrically heated members being adapted to be moved on said swinging arms and said hinges into a position where the waffle-baking surfaces may be placed together ss

that the edges of the faces thereof will rest firmly against each other.

76266

14

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B 13

5. A folding electric cooking apparatus comprising two support members, a grill member firmly mounted at each end on one of said support members, a plurality of swinging arms having one end of each arm pivotally mounted on said support members, a horizontal support member mounted at its ends on said first mentioned support members, another cooking member revolubly mounted on the other ends of said swinging arms, and a third cooking member mounted on a plurality of hinges each attached at its one end to the wall of said member and at its other end to said horizontal support member, all of said cooking members being adapted to be super-posed one above the other in a compact form.

Sub. B2

~~6. In a device of the class described, a waffle element, another waffle element to be used in connection therewith, and means for electrically heating both of said waffle elements.~~

~~7. In a device of the class described, a pair of waffle members pivotally connected together and means for electrically heating each member of said pair.~~

~~8. In a device of the class described a pair of waffle members pivotally connected together at one~~

side, means for electrically heating each member of said pair, and means for separately closing or opening the current to each of said electrical heating means.

9. In a device of the class described, a pair of waffle members pivotally connected together at one side, each consisting of an outer casing, a non-conducting element therein, an electric heating element adjacent thereto, and a metallic baking element adjacent said heating element.

10. In a device of the class described, a pair of waffle members pivotally connected together at one side, each consisting of an outer casing, a non-conducting element therein, an electric heating element adjacent thereto and a metallic baking element adjacent said heating element provided with a plurality of symmetrically aligned projections there-

76266

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on.

11. 6. In a device of the class described, a pair of waffle members pivotally connected together at one side, each consisting of a hollow outer casing, an electrical heating element mounted in said casing, a non-conducting element spacing said heating element from said casing, and a metallic waffle baking element adjacent said heating element.

Respectfully submitted,

WILLIAM D. WRIGHT,

By E. E. RODABAUGH,

His Attorney in Fact.

76266

16

2-260

Div. 3. Room 175.

Paper No. 4.

Address only

All communications respecting this

"The Commissioner of Patents,

application should give the serial

Washington, D. C.,"

number, date of filing, title of

and not any official by name.

invention, and name of the

MB/RAJ.

applicant.

DEPARTMENT OF THE INTERIOR

UNITED STATES PATENT OFFICE

WASHINGTON

24.

May 31, 1916.

U. S. Patent Office. May 31, 1916. Mailed.

E. E. Rodabaugh,

503 Central Mortgage Bldg.,

San Diego, Calif.

Please find below a communication from the EX-AMINER in charge of the application of W. D. Wright, Electric Cooking Apparatus, 76,266, filed Feb. 5, 1916.

THOMAS EWING,

Commissioner of Patents.

Replying to amendment filed May 2, 1916.

It is suggested that in line 7, claim 1, "parallel" be changed to horizontal.

It is thought that the word "current" in the last line of claim 2 should be circuit.

Several errors occurring in claim 4 should be corrected.

The following references not now of record are cited:

Jaeger, 333,229, Dec. 29, 1885, 107 - 66

Aaron, 1143,603, Jun. 22, 1915, 126 - 41,

Claims 6 to 11, inclusive, are rejected on the references now of record. The application to a waffle iron of an electric heater is not considered patentable broadly, though the specific subject-matter of claims 1 to 5 appears to be patentable and these claims are deemed allowable except as indicated above.

B.

76266

17

WM. J. RICH,
Examiner, Div. 3.

Serial No. 76266.

Paper No. 5, Amendment B.

B 15.

Mail Room. Jul. 8, 1916. U. S. Patent Office.

U. S. Patent Office. Jul. 10, 1916. V. 3.

IN THE UNITED STATES PATENT OFFICE.

Div. 3, Room 175,

W. D. Wright,

Electric Cooking Apparatus,

Filed Feb. 5, 1916,

Serial No. 76,266

Hon. Commissioner of Patents,

Sir: In response to the last office action of May 31, 1916, the above-named application is amended as follows:

Line 1, claim 7, change "parallel" to "horizontal."

Claim 2, last line, change "current" to "circuit."

Cancel claim 4 and substitute:

4. In a device of the kind described, the combination of two electrically heated members each provided with an aluminum waffle baking surface, swinging arm members upon which one of said electrically heated members is revolubly mounted, and a support upon which the other electrically heated member is hinged, whereby said electrically heated members are adapted to be moved on said swinging arms and said hinges into a position where the waffle baking surfaces may be placed together so that the edges of said baking surfaces will rest firmly against each other. Cl 5

Cancel claims 6 to 11 inclusive and substitute:

6. In a device of the class described, a pair of casings pivotally connected together, a waffle member provided with an aluminum baking surface mounted in each of said casings so that ~~the~~ each of said aluminum baking surfaces covers the upper edge of one of said casings, and means mounted in

said casings between said casings and said waffle members for electrically heating said waffle members.

7. In a device of the class described, a pair of casings pivotally connected together, a waffle member provided with aluminum baking surfaces mounted in each of said casings so that their sur-
76266

18

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B 16

faces extend past the edges of said casings, means mounted in said casings between said casings and said waffle members for electrically heating said waffle members, consisting of an electrical heating element adjacent said waffle member and a non-conducting element spacing said electrical heating element from said casing.

8. In a device of the class described, a pair of box-shaped casings pivotally connected together so as to fold one upon the other, a waffle member mounted in each of said casings provided with outwardly extending flanges extending past the edges of said casing, whereby said waffle members are supported on the edge of said casing and spaced apart from the bottom thereof, and electrical means mounted in the space between said waffle member and said casing for heating said waffle member.

9. In a device of the class described, a pair of box-shaped casings pivotally connected together so as to fold one upon the other, a waffle member mounted in each of said casings provided with out-

wardly extending flanges extending past the edges of said casing, whereby said waffle members are supported on the edge of said casing and spaced apart from the bottom thereof, electrical means mounted in the space between said waffle member and said casing for heating said waffle member, consisting of an electrical heating element adjacent said waffle member and a non-conducting element spacing said electrical heating element from said casing.

(Sigs.)

REMARKS.

It is thought that the claims as now amended avoid the references of record. Perkey of record is a machine for preparing foods from grain, such as crackers and the like, and obviously is not for baking waffles, therefore it is in a non-analogous art. In the cases of *Ansonia vs. Electrical Supply Company*, 144 U. S., Page 11, and *Bonsack vs. Elliott*, 69 Fed. 335, the Courts censored citations in non-analogous arts. Furthermore, we do not find in

76266

19

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Perkey the structure as set forth in these claims nor would the Perkey structure suggest applicant's structure as set forth in these claims. In neither *Aaron*, *Ljung* nor *Jager* do we find an electrically heated baking device though applicant's claims are not drawn broadly but are specific to the structure. It is submitted that none of the claims as now writ-

ten read on any or all of the references of record nor would any or all of the references of record suggest applicant's structure as set forth in said claims.

A favorable consideration of the claims is therefore respectfully requested.

Respectfully submitted,

W. D. WRIGHT,

By E. E. RODABAUGH,

His Attorney in Fact.

76266

20

Paper No. 6
Amendment C

2—254

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE
WASHINGTON, D. C.

July 26, 1916.

In compliance with the provisions of order No. 1718, dated June 8, 1907, and which reads as follows:

It is hereby ordered that, except by formal amendment duly signed or as hereinafter provided, no corrections, erasures, or interlineations be made in the body or written portions of the specification or of any other paper filed in an application for patent.

Obvious informalities in the wording of the specification may be corrected by the examiner, but said correction must be in the form of an amendment,

approved by the Principal Examiner in writing, placed in the file, and made a part of the record. The changes specified in the amendment will be entered by the clerk in the regular way.

It is directed that no other changes be made by any person in any record of this office without the written approval of the Commissioner of Patents.

Attorneys, employees of the Patent Office, and all others will be held to strict accountability for any violation of this order.

The following changes are made in—

Application Serial No. 76,266 of W. D. Wright.

At the end of line 3, claim 6, cancel “the.”

WM. J. RICH,
Examiner, Division 3.

76266

21

Address Only

The Commissioner of Patents,
Washington, D. C.

AH

2—181

Serial No. 76266

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE
WASHINGTON.

July 29, 1916.

William D. Wright,

Sir: Your APPLICATION for a patent for an
IMPROVEMENT in Electric Cooking Apparatus,

filed Feb. 5, 1916, has been examined and ALLOWED.

The final fee, TWENTY DOLLARS, must be paid not later than SIX MONTHS from the date of this present notice of allowance. If the final fee be not paid within that period, the patent on this application will be withheld, unless renewed with an additional fee of \$15, under the provisions of Section 4897, Revised Statutes.

The office delivers patents upon the day of their date, and on which their term begins to run. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will require about four weeks, and such work will not be undertaken until after payment of the necessary fee.

When you send the final fee you will also send, DISTINCTLY AND PLAINLY WRITTEN, the name of the INVENTOR, TITLE OF INVENTION, AND SERIAL NUMBER AS ABOVE GIVEN, DATE OF ALLOWANCE (which is the date of this circular), DATE OF FILING, and, if assigned, the NAMES OF THE ASSIGNEES.

If you desire to have the patent issue to ASSIGNEES, an assignment containing a REQUEST to that effect, together with the FEE for recording the same, must be filed in this office on or before the date of payment of final fee.

After issue of the payment uncertified copies of the drawings and specifications may be purchased at the price of FIVE CENTS EACH. The money should accompany the order. Postage stamps will

UNCERTIFIED CHECKS WILL NOT BE ACCEPTED.

not be received.

Final fees will not be received from other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

Respectfully,
THOMAS EWING,
Commissioner of Patents.

E. E. Rodabaugh,
503 Central Mortgage Bldg.,
San Diego, California.

76266

22

Paper No. 7
Amendment D

2—254

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE
WASHINGTON, D. C.

Jan. 19, 1917.

In compliance with the provisions of order No. 1718, dated June 8, 1907, and which reads as follows:

It is hereby ordered that, except by formal amendment duly signed or as hereinafter provided, no corrections, erasures, or interlineations be made in the body or written portions of the specification or of any other paper filed in an application for patent.

Obvious informalities in the wording of the speci-

fication may be corrected by the examiner, but said correction must be in the form of an amendment, approved by the Principal Examiner in writing, placed in the file, and made a part of the record. The changes specified in the amendment will be entered by the clerk in the regular way.

It is directed that no other changes be made by any person in any record of this office without the written approval of the Commissioner of Patents.

Attorneys, employees of the Patent Office, and all others will be held to strict accountability for any violation of this order.

The following changes are made in—

Application Serial No. 76,266 of Wm. D. Wright:
Page 5, line 19, change “edges” to edge.

	WM. J. RICH,
76266	Examiner, Division 3.
23	

\$20 Rec. Jan. 2, 1917. Ck. C. C. U. S. Pat. Offic. J.
Office Phones: Main 358

Home 3005

Residence Phones: Home 9302

Main 4256

HENDEE & RODABAUGH,
Attorneys and Counsellors at Law,
Suite 503-506, Central Mortgage Bldg.,
Cor. Broadway and First Sts.,
San Diego, Cal.

December 27, 1916.

E. E. Rodabaugh

E. E. Hendee

In the United States Patent Office.

Div. 15, Room 308.

Electric Cooking Apparatus.

Filed Feb. 5, 1916.

Serial No. 76,266.

Hon. Commissioner of Patents,

Sir: Enclosed please find Money order for Twenty Dollars in payment of the final fee in the above-entitled application.

The allowance herein bears date of July 29, 1916.

The patent is to issue in the name of CRANE & WRIGHT ELECTRIC COMPANY, the assignee named in the assignment enclosed herewith for record.

Kindly send patent to us,

Yours truly,

WILLIAM D. WRIGHT,

By His Attorney,

E. E. RODABAUGH,

76266

8/28/16

2—421

1916

~~1915~~

CONTENTS:

1. Application — papers. OK.	26.
2. Letter, Apr. 7, 1916.	27.
3. Amendt. A. May 2, 1916.	28.
4. Rejection. May 31, 1916.	29.
5. Amendment B. July 8, 1916.	30.
6. Amendment C. July 26, 1916.	31.
7. Amendment D. Jan. 19, 1917.	32.
8.	33.
9.	34.
10.	35.
11.	36.
12.	37.
13.	38.
14.	39.
15.	40.
16.	41.
17.	42.
18.	43.
19.	44.
20.	45.
21.	46.
22.	47.
23.	48.
24.	49.
25.	50.

76266

25

